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*Linda Perkins*

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SEE BOOK 4173 PAGE 262

**DECLARATION OF CONDOMINIUM  
FOR THE 213 EAST FRANKLIN STREET CONDOMINIUMS**

**NO FLAG SHALL BE DISPLAYED ON OR ABOUT THE EXTERIOR OF ANY UNIT, OR IN THE WINDOW OF ANY UNIT, OR IN THE COMMON ELEMENTS (SEE SECTION 7.12 OF THIS DECLARATION). THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF NORTH CAROLINA.**

**NO SIGN SHALL BE DISPLAYED ON OR ABOUT THE EXTERIOR OF ANY UNIT, OR IN THE WINDOW OF ANY UNIT, OR IN THE COMMON ELEMENTS (SEE SECTION 7.12 OF THIS DECLARATION). THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.**

Drawn by and mail to:  
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STATE OF NORTH CAROLINA

COUNTY OF ORANGE

**DECLARATION OF CONDOMINIUM  
FOR THE 213 EAST FRANKLIN STREET CONDOMINIUMS**

This Declaration of Condominium for 213 East Franklin Street Condominiums (this "Declaration") is made this \_\_\_\_ day of December, 2006, by 213 E. FRANKLIN STREET, LLC, a North Carolina limited liability company ("Declarant"), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled the "North Carolina Condominium Act."

**BACKGROUND STATEMENT**

Declarant is the owner of a parcel of real estate located in Orange County, North Carolina, and more particularly described on Exhibit A attached hereto (the "Land"). A building containing eight (8) residential dwelling units is located on the Land. There are also other common amenities, such as sidewalks, driveways, landscaped areas and other improvements, on the Land. Declarant desires to submit the Land and the improvements located on the Land (collectively, the "Property") to the terms and provisions of the North Carolina Condominium Act (the "Act").

In addition, Declarant shall create a nonprofit, incorporated owners' association to which will be delegated and assigned powers of maintaining and administering the "Common Elements" of the "Condominium" (as those terms are defined below), of administering and enforcing the covenants and restrictions created in this Declaration, and 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 condominium units within the Property and to promote the recreation, health and welfare of the unit owners.

**STATEMENT OF DECLARATION**

**NOW, THEREFORE**, Declarant hereby declares that all of the Property shall be held, transferred, sold, conveyed, encumbered, occupied, developed and used subject to the following covenants, conditions, easements, uses, limitations, obligations, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the establishment of the Property as a condominium, pursuant to the Act, and which shall run with the land and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall all inure to the benefit of each owner of any interest therein.



## ARTICLE I. DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following terms, words, and phrases shall have the following meanings when used in this Declaration:

Section 1.1 Act. "Act" shall mean and refer to the North Carolina Condominium Act, Chapter 47C of the General Statutes of North Carolina, as amended from time to time.

Section 1.2 Association. "Association" shall mean and refer to The 213 East Franklin Street Condominiums Owners Association, Inc., a corporation organized and existing under the North Carolina Non-Profit Corporation Act pursuant to and in accordance with this Declaration, the Bylaws, and the Act.

Section 1.3 Building. "Building" shall mean and refer to the building located upon the Land.

Section 1.4 Bylaws. "Bylaws" shall mean and refer to the bylaws of the Association, as amended from time to time.

Section 1.5 Common Elements. "Common Elements" shall mean and refer to all portions of the Condominium other than the Units, as depicted on the Plans, and as more particularly described in Section 5.1 of this Declaration, and shall specifically include but not be limited to water lines and sewer lines located outside public street rights-of-way and utility easements granted to the City of Chapel Hill, to the extent such lines are not included in the Units.

Section 1.6 Common Elements Interest. "Common Elements Interest" also described herein from time to time as an "interest in Common the Elements" shall mean and refer to the undivided percentage or fractional interest in the Common Elements allocated to each Unit, as set forth on Exhibit B attached hereto, the total of which shall equal one if a fraction or one hundred percent (100%) if expressed as a percentage. Each Unit's allocated interest in the Common Elements shall be based on its approximate square footage divided by the sum total square footage of all of the Units, all as set forth in Exhibit B, and such interest shall be used to allocate votes in the Association and the division of proceeds, if any, resulting from any casualty loss or eminent domain proceedings.

Section 1.7 Common Expenses. "Common Expenses" shall mean and refer to (i) any and all expenditures made by or financial liabilities of the Association which include but are not limited to ad valorem taxes, public assessments or governmental liens levied against the Common Elements, to the extent not billed to individual Units, and (ii) any allocations to reserves, pursuant to and in accordance with this Declaration, the Bylaws, and N.C.G.S. § 47C-1-103(5).



Section 1.8 Condominium. "Condominium" shall mean and refer to The 213 East Franklin Street Condominiums, as established by the submission of the Property to the terms of the Act by this Declaration.

Section 1.9 Condominium Documents. "Condominium 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 1.10 Declarant. "Declarant" shall mean and refer to 213 E. Franklin Street, LLC, a North Carolina limited liability company. In addition, following recordation of a document transferring to another person or entity all or some of the Special Declarant Rights, pursuant to Section 6.2 of this Declaration, the term "Declarant" also shall mean and refer to that transferee.

Section 1.11 Declarant Control Period. "Declarant Control Period" shall mean and refer to the period commencing on the date hereof and continuing until the earlier of (i) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of all Units to an Owner other than Declarant; or (ii) two (2) years after Declarant ceases to offer Units for sale in the ordinary course of business.

Section 1.12 Declaration. "Declaration" shall mean and refer to this Declaration of Condominium for The 213 East Franklin Street Condominiums, as it may be amended from time to time.

Section 1.13 Executive Board. "Executive Board" shall mean and refer to the governing body from time to time of the Association as constituted in accordance with the Articles of Incorporation of the Association, the Bylaws and the Act.

Section 1.14 Land. "Land" shall mean and refer to the real property subject to this Declaration, exclusive of any improvements located thereon or incorporated therein, which is more particularly described on Exhibit A attached hereto.

Section 1.15 Limited Common Elements. "Limited Common Elements" shall mean and refer to those portions of the Common Elements allocated by this Declaration, or the terms of N.C.G.S. § 47C-2-102(2) or (4), for the exclusive use and benefit of one or more, but fewer than all, of the Units, to the exclusion of all other Units, as more fully described in Section 5.2 of this Declaration, and as depicted on the Plans.

Section 1.16 Mortgage. "Mortgage" shall mean and refer to a mortgage or deed of trust constituting a first lien on a Unit.

Section 1.17 Mortgagee. "Mortgagee" shall mean and refer to the owner and holder of 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 will be deemed to include a request that the Mortgagee be given the notices and other rights described in Article XVI.

Section 1.18 Owner. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation.

Section 1.19 Plans. "Plans" shall mean and refer to the surveys, plans and specifications of the Building and Property and recorded under the name of the Condominium in the Condominium Plat Books in the Office of the Register of Deeds of Orange County.

Section 1.20 Property. "Property" shall mean and refer to the Land; the Building and all other improvements and structures located on the Land; and all easements, rights and appurtenances belonging or appertaining to the Land.

Section 1.21 Special Declarant Rights. "Special Declarant Rights" shall mean the rights reserved for the benefit of Declarant in the Condominium Documents, including all development rights, as more particularly described in Article VI of this Declaration.

Section 1.22 Unit. "Unit" shall mean and refer to those Units located within the Building, which are restricted to residential use (subject to the provisions of Section 7.2 herein), all of which Units shall be the subject of individual ownership by an Owner.

In addition, the definitions set forth in N.C.G.S. § 47C-1-103 are incorporated in this Declaration by reference, and the terms defined therein shall have the meanings set forth therein when used in this Declaration or the Condominium Documents, unless those terms are expressly defined otherwise in this Declaration or unless it is plainly evident from the context that a different meaning is intended.

## ARTICLE II. DESCRIPTION OF CONDOMINIUM

The Property is located entirely in Orange County, North Carolina and is more particularly described on Exhibit A attached hereto and incorporated herein by reference. The Property is hereby subjected to the terms of the Act by this Declaration. The name of the Condominium is The 213 East Franklin Street Condominiums.

## ARTICLE III. DESCRIPTION OF BUILDING

The Building contains those certain Units, Common Elements, and Limited Common Elements shown on the Plans. The Building has a ground level and four floors above that ground level, and is constructed of brick veneer with an external 2 X 6 stud wall. Interior load bearing elements are wood. The Building has fire protection sprinklers. Interior walls are constructed of

5/8" gypsum wall board. The Plans contain a certification by a North Carolina registered surveyor and a North Carolina licensed architect, that the Plans contain all the information required by N.C.G.S. § 47C-2-109.

#### ARTICLE IV. DESCRIPTION OF UNITS

Section 4.1 Location of Building. The location and dimensions of the Building are shown on the Plans.

Section 4.2 Units. The location of Units within the Building, their dimensions, and their floor and ceiling elevations, are shown on the Plans. There are a total of eight (8) Units. The identifying number for each Unit is set forth on the Plans.

Section 4.3 Unit Boundaries. The boundaries of each Unit are as follows:

- (a) Upper Boundary: The horizontal plane of the top surface of the wallboard in the ceilings within each Unit.
- (b) Lower Boundary: The horizontal plane of the top surface of the subflooring within each Unit.
- (c) Vertical Boundaries: The vertical planes which include the back surface of the wallboard of all walls bounding the Unit, extended to intersections with each other, and with the upper and lower boundaries.
- (d) Doors and Windows: The exterior surface of doors and the exterior surface of the glass and each window frame.

As provided in N.C.G.S. § 47C-2-102(1), all furring, wallboard, plasterboard, tiles, paint, finished flooring and any other materials constituting any part of the finished surfaces of the perimeter walls, floors, and ceilings are part of the Unit. As provided in N.C.G.S. § 47C-2-102(2), if any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit shall be a Limited Common Element allocated to that Unit, as provided in Section 5.2 below, and any portion thereof serving more than one Unit, or any portion of the Common Elements, shall be a Common Element.

#### ARTICLE V. COMMON ELEMENTS

Section 5.1 Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units, including without limitation:



- (a) All improvements located on the Land outside of the Building, including without limitation all paved areas, the covered and uncovered parking spaces (which covered and uncovered parking spaces are Limited Common Elements as set forth in Section 5.2 herein), all retaining walls, and all landscaped areas.
- (b) All other portions of the Building located outside of the Units, including without limitation the following: the storage units (which storage units are Limited Common Elements as set forth in Section 5.2 herein), elevators, stairwells, all elevator equipment rooms and other mechanical rooms, all other portions of the common mechanical systems for the Building, all hallways and corridors located outside of the Units and the roof.
- (c) The Limited Common Elements described in Section 5.2 below.
- (d) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units, and all other structural elements of the Building.
- (e) Any public connections and meters for utility services that are not owned by the public utility or municipal agency providing such services.
- (f) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.

Section 5.2 Limited Common Elements. The Limited Common Elements shall be composed of the following:

- (a) Those portions of any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, sky lights, or any other fixture lying partially within and partially outside the designated boundaries of a Unit, but serving exclusively that Unit, which shall be Limited Common Elements allocated exclusively to that Unit.
- (b) Any awnings, porches, balconies, and all exterior doors and windows or other fixtures designed to serve a single Unit, but located outside that Unit's boundaries, which shall be Limited Common Elements allocated exclusively to that Unit.
- (c) Any portions of the heating, ventilating, and air conditioning systems, including a heat pump for each Unit, and all fans, compressors, return air grills and thermostats, whether located inside or located outside the designated boundaries of a Unit, which shall be Limited Common Elements allocated exclusively to the Unit or Units that they serve.
- (d) Those areas indicated as Limited Common Elements on the Plans.



- (e) The covered parking spaces, one of which has been assigned to each Unit except for Unit 1-C, and is appurtenant to each such Unit, as more particularly set forth in Section 5.5 herein. One uncovered parking space shall also be assigned to and shall be appurtenant to each Unit, as more particularly set forth in Section 5.5 herein. Exhibit C attached hereto and incorporated herein by reference is a list showing which parking spaces are assigned to each Unit as Limited Common Element.
- (f) The storage units located in the ground floor of the Building as shown on the Plans, one of which has been assigned to each Unit, except for Unit 1-C, and is appurtenant to each Unit, as more particularly set forth on Exhibit D attached hereto and incorporated herein by reference. Exhibit D is a list showing which storage spaces are assigned to each Unit.

The cleanliness and orderliness of the Limited Common Elements shall be the responsibility of the individual Owner having the right to the use and enjoyment of such Limited Common Elements. Notwithstanding any other provisions of this Declaration, or any provision of the Bylaws or the Act, the obligation for maintenance, repair, or replacement of any portions of the heating, ventilating, and air conditioning systems that are Limited Common Elements shall be the sole responsibility of the Owners of the Units to which such Limited Common Elements are allocated. References in this Declaration to "Common Elements" shall include Limited Common Elements unless the context clearly indicates otherwise. The allocation of use of Limited Common Elements to the Units as provided for in this Declaration shall not be altered without the unanimous consent of the Owners whose Units are affected.

Section 5.3 Undivided Interests of Owners in Common Elements. The percentage interest in the Common Elements allocated to each Unit shall be the Common Elements Interest for that Unit as set forth on Exhibit B attached hereto.

Section 5.4 Maintenance of Common Elements. The Association shall be responsible for the maintenance and repair of all Common Elements, except that the Owners having the right to use and enjoy such Limited Common Elements shall perform everyday and routine maintenance with respect to such Limited Common Elements, including without limitation cleaning and sweeping covered parking spaces, and storage units, and except for maintenance or repairs caused by the negligence or intentional misconduct of any Owner, his or her agents, invitees or family members, which shall be the responsibility of that Owner. All other repairs of Limited Common Elements, other than everyday and routine maintenance, including without limitation the painting of such Limited Common Elements, shall be performed by the Association, and the costs thereof shall be a Common Expense of the Association. The Association may repair a Limited Common Element if the applicable Owner fails to do so, and the costs of such repair shall be charged to such owner as an individual assessment, as provided in Section 10.5 herein. In addition, each Owner shall maintain and repair any utilities, including without limitations pipes and cables, which are located within such Owner's Unit at the Owner's sole cost and expense, and the Association shall maintain and repair any utilities which are



located within the Common Elements, the cost of which maintenance and repair shall be a Common Expense of the Association.

Section 5.5 Parking Rights. The Owner of Unit 4-A has an exclusive easement to use two (2) covered parking spaces. The Owners of the other Units (except for Unit 1-C) have exclusive easements to use one (1) covered parking space and one (1) uncovered parking space. The Owner of Unit 1-C has an exclusive easement to use one (1) uncovered parking space. These parking spaces are allocated by Declarant as Limited Common Elements. Declarant reserves, for itself and the Association, the right to require Owners to display appropriate permits on their vehicles. No guests and invitees of any Owner shall be allowed to use any parking space on the Property without the express permission of the Owner of the Unit to which such space is allocated. Parking spaces allocated by Declarant to Owners may not be leased by Owner to others; provided, however, if a Unit is leased by an Owner to a tenant, the parking spaces appurtenant to such Unit may also be leased to such tenant.

#### ARTICLE VI. SPECIAL DECLARANT RIGHTS

Section 6.1 Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of Declarant in the Condominium Documents, which rights may be exercised within seven (7) years following the date of recording of this Declaration, and shall include without limitation the following rights, which are hereby reserved by Declarant:

- (a) The right to complete any improvements shown on the Plans.
- (b) The right to maintain sales offices, model units, and signs advertising the Condominium.
- (c) The right to use easements through the Common Elements for the purpose of completing construction.
- (d) The right to appoint or remove officers of the Association or members of the Executive Board during the Declarant Control Period.
- (e) The right to subdivide or combine the Units, as provided in Section 9.5(b).
- (f) The right to exercise any other rights granted to or reserved by Declarant in the Condominium Documents.

Section 6.2 Transfer of Special Declarant Rights. Declarant may transfer any Special Declarant Rights created or reserved under the Condominium Documents to any person or entity, by an instrument evidencing the transfer duly recorded in the Office of the Register of Deeds for Orange County. The instrument shall not be effective unless it is executed by the transferor and the transferee. Upon the transfer of any Special Declarant Rights, the liability of the transferor and the transferee shall be as set forth in N.C.G.S. § 47C-3-104.



ARTICLE VII.  
RESTRICTIONS ON USE

Section 7.1 Residential Use. All Units shall be used for residential purposes only; provided, however, that portions of the Units also may be used for home office purposes by the residents of such Units, provided that the primary use of each Unit is residential, no business customers of the Owner visit the Unit and the Owner does not advertise the address of the Unit as such Owner's business address. Notwithstanding the foregoing, Declarant may maintain any Unit owned by Declarant as a sales office or model Unit. Declarant may maintain as many sales offices and model Units as it desires, and may relocate such sales offices and model Units within the Property in its sole discretion. In addition, Units shall be occupied by no more persons than the maximum permitted by law for the Unit and all Units shall be used in a manner which is consistent with those rules and regulations promulgated from time to time in accordance with the this Declaration, which rules may change from time to time.

Section 7.2 Nuisance. No obnoxious, offensive or unlawful activity shall be conducted within any Unit, or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an annoyance or nuisance to the other Owners, or endanger the health and safety of any Owner. Nothing shall be done or kept in any Unit or in the Common Elements that will result in the termination of, or an increase in the premium for, the policy of property insurance for the Property. Owners are responsible for preventing disturbing noises or noisy and boisterous conduct which would disturb the peace and conduct of other Owners. The loud playing of stereos, televisions or musical instruments is discouraged, together with any noisy or boisterous conduct which would disturb the peace and quiet enjoyment of other Owners. No owner shall mount or place a speaker or other sound amplification equipment within a common wall, ceiling or floor. In order to minimize noise transfer from a Unit to the Unit located below, Owners of all Units other than Units located on the first floor of the Building shall cover hardwood floors in all rooms except for the kitchen with carpet runners and area rugs which carpet runners and area rugs shall cover the majority of the hardwood floors in such Unit.

Section 7.3 Prohibitions on Use of Common Elements. The Common Elements (other than the storage units appurtenant to Units as set forth in Section 5.2) shall not be used for the storage of personal property of any kind, including without limitation bicycles, wagons and carts. Stairs, entrances, lobbies, hallways, sidewalks, driveways, drainage areas and parking areas shall not be obstructed in any way, or used for other than their intended purposes. Except for work done by the Declarant in connection with the construction and marketing of Units, nothing shall be built, caused to be built or done in or to any part of the Property which will alter or cause any alteration to the Common Elements without the prior written approval of the Executive Board and the Declarant. The Declarant's approval shall be required until one (1) year after the conveyance by the Declarant of the last Unit. In general, no activity shall be carried on nor conditions maintained by any Owner either in his or her Unit or upon the Common Elements which despoils the appearance of the Property.



Section 7.4 Garbage. Trash, garbage and other waste shall be kept in sanitary containers within each Unit, and the Owner of each Unit shall be responsible for placing such garbage in the designated common trash receptacle on a regular basis. No Owner may place large articles, including without limitation furniture or mattresses, in or near the garbage receptacle area. Boxes shall be completely collapsed before disposal. No trash or garbage shall be placed on balconies, patios or outside of the front door of a Unit or in the common hallway of any Building.

Section 7.5 Parking. The parking rights of Owners or their guests are described in Section 5.5 of this Declaration, and are subject to any rules or regulations that may be promulgated by Declarant or the Association. No boat, boat trailer, motor home, travel trailer, camper, van (other than non-commercial passenger vans), trucks (unless licensed as a passenger vehicle and less than three-quarter ton capacity), commercial vehicles (whether or not registered as a commercial vehicle with the North Carolina Department of Motor Vehicles) or other recreational vehicle may be stored on the Property at any time. The Association shall have the right to tow any vehicle in violation of this Section 7.5 at its owner's expense.

Section 7.6 Leases of Units.

(a) An Owner need not obtain Association approval to lease a unit to a single family. That said, no Owner may otherwise rent or lease a unit except with the written approval of the Executive Board, which approval may only be granted in the event of an emergency or undue hardship to an Owner. The Executive Board, in its sole and absolute discretion, shall determine instances of emergency and undue hardship on a case by case basis. An Owner seeking to lease or rent a unit because that Owner is faced with an emergency or undue hardship shall be required to submit a written request to the Executive Board, which request shall set forth, among other things, the extraordinary circumstances applicable to such owner's request to lease or rent its unit. Written requests shall be deemed to be disapproved in the event the Executive Board has not expressly and in writing approved such request within thirty (30) business days of the submission of such request. No member of the Executive Board shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of a request for lease to any Owner. Each request for lease submitted hereunder shall be reviewed separately and apart from other such requests and the grant of any such request to any Owner shall not constitute a waiver of the Executive Board's right to strictly enforce the Declaration against any other Owner. In the event the Executive Board grants a request for lease, the Executive Board may impose such conditions or restrictions on the leasing arrangement as it deems appropriate. The following restrictions shall apply where any unit is leased or rented (regardless of whether Executive Board approval need be obtained):

i. Any Owner who rents or leases his or her Unit to a tenant shall not be entitled to use and enjoy any Common Elements during the period the Unit is occupied by such tenant.



ii. No Owner shall lease or rent less than an entire Unit and no more than a single family may live as a tenant in any Unit at any one time. The Units shall not be leased or rented for hotel or transient purposes and no rental agreement or lease shall be made for a period of less than twelve (12) months (unless a lease is executed for a shorter term in connection with the sale of a Unit by an Owner who is to temporarily occupy such Unit following the closing of the sale thereof). Any lease or rental agreement between an Owner and a tenant shall be in writing and shall provide that it is in all respects subject to the provisions of this Declaration and the Bylaws, and any applicable rules and regulations and that any failure by the tenant to comply with such provisions shall be a default under the rental agreement or lease. However, the failure of any lease or rental agreement to so provide shall not excuse any person from complying with the provisions of this Declaration, the Bylaws, and any applicable rules and regulations.

(b) The Owner must provide to the Executive Board in writing such documentation evidencing the leasing arrangement as may be requested by the Executive Board, including, without limitation, the following :

- i. the name of the tenant and the Unit rented or leased;
- ii. the current address of such Owner;
- iii. a true and complete copy of the leases or rental agreement; and
- iv. the certification of the Owner that the tenant has been given a copy of the Declaration, any applicable amendments, the Bylaws and any applicable rules and regulations and that such tenant has been advised of any obligations he may have thereunder as a tenant.

(c) In no event shall any lease or rental agreement release or relieve an Owner from the obligation to pay annual and special assessments to the Association, regardless of whether the obligation to pay assessments has been assumed by the tenant in such lease or rental agreement.

Section 7.7 No Timeshares. No interest in any Unit may be subjected to a time share program, as that term is defined in N.C.G.S. § 93A-41(10). Notwithstanding the foregoing, nothing herein shall be deemed to prohibit two or more Owners from owning a Unit together and from agreeing to or otherwise occupying their Unit intermittently and each at different times from the other.

Section 7.8 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. All clothes dryers will have lint filters, and all range 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. Water service shall be metered through one central Building meter and submetered, with one submeter for each Unit and one for the Common Elements. Each Owner



will be billed by the Association for water use in such Owner's Unit based on the readings from the submeter for the Unit. Water for the Common Elements shall be paid by all Owners as a Common Expense

Section 7.9 Pets. No Owner shall keep more than two (2) pets in such Owner's Unit and no pet may exceed forty (40) pounds. The Association may impose fines on Owners of pets for a violation of this paragraph and of any applicable rules and regulations pursuant to this Declaration from time to time.

Section 7.10 Windows. No curtains, draperies or blinds or other window treatment shall be installed or hung in any window of any Unit unless they have a white or neutral lining or backing on the side exposed to the window. No other colors may be used unless approved in writing by the Association prior to installation. No storm windows shall be installed in any Unit, and no stickers or decals may be affixed to the windows in any Unit or elsewhere on the exterior of a Unit, except that decals of security systems may be affixed to windows. Window air conditioners are prohibited.

Section 7.11 Architectural Control. No exterior addition to, or change or alteration in, any Unit or the Common Elements shall be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Association. No Owner shall penetrate the exterior of a Building in any way. No hangings shall be permitted on patios, balconies, the covered parking structure or front doors to Units and there shall be no awnings, screening, fencing or canopies installed.

Section 7.12 Signs: Flags: Banners. No signs (including political signs) or other advertising devices, including without limitation "For Sale" and "For Rent" signs, or any flag or banner (including any United States or American flag, and any State of North Carolina flag) shall be displayed on or about the exterior of any Unit, or in the window of any Unit, or in the Common Elements. Notwithstanding the foregoing, Declarant shall have the right to maintain upon the Property advertising signs and banners during the Declarant Control Period, provided those signs comply with applicable governmental regulations.

Section 7.13 Maintenance. The Owner of each Unit is responsible for maintaining his or her Unit as well as performing everyday and routine maintenance of the Limited Common Elements appurtenant thereto, as more particularly set forth in Section 5.4 herein, and performing everyday and routine maintenance of any storage unit appurtenant to such Owner's Unit. Each Owner shall keep his or her respective Unit and its appurtenant Limited Common Elements in a clean, neat and orderly condition and in a good state of maintenance and repair. If an Owner fails to comply with the standards or requirements of the Association relative thereto, the Association shall assess the defaulting Owner the cost thereof as an individual assessment, as more particularly described in Section 10.5 herein, and shall undertake to effect said compliance.

Section 7.14 Rules and Regulations. In addition to the use restrictions set forth in this Declaration, reasonable rules and regulations governing the use of the Property may be made and amended from time to time by Declarant during the Declarant Control Period and the



Association following the expiration of the Declarant Control Period. Copies of such regulations and amendments thereto shall be furnished by Declarant or the Association to all Owners upon request.

**Section 7.15 Storage Units.** Owners may not store dangerous or unlawful items within any storage unit, including without limitation paint, solvents or other hazardous, flammable, explosive or dangerous materials, contraband, illegal substances, any other item that would contravene any applicable laws, regulations or provisions of any insurance policy carried by Owner, any item that would cause an increase in premium of any insurance policy carried by the Association and any item that may be considered to be a nuisance. Nothing may be done or kept in any or storage unit that may result in the termination of, or an increase in the premium for, the policy of property insurance for the Property. Owners shall use storage units at their sole risk. Declarant and the Association are not responsible for the loss of or damage to any Owner's possessions due to any cause whatsoever, unless that cause is the result of Declarant's or the Association's negligence. The Association's insurance will not cover any possessions stored in any storage unit, and Declarant and the Association urge Owners to obtain insurance for such possessions.

**Section 7.16 Illegal Activities.** The Owner, any member of the Owner's household, or a guest or other person under the Owner's control (including but not limited to a tenant) shall not engage in or facilitate criminal activity on or near the Condominium, including, but not limited to, violent criminal activity or drug-related criminal activity and shall not keep or store any firearms in such Owner's Unit, Limited Common Elements or elsewhere on the Condominium. "Violent criminal activity" means any felonious criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another. "Drug-related criminal activity" means the illegal manufacture, sale, distribution or use, or possession with intent to manufacture, sell, distribute or use, of a controlled substance (as defined in 42 U.S.C. 1437).

**Section 7.17 Supervision of Children.** Owners are asked to be responsible for their own children and ensure that they abide by this Declaration and any rules and regulations as may be adopted in accordance with the Bylaws. Children should not play in or around the parking areas, trash receptacles, elevators, or parking areas. Young children must be supervised by an adult at all times. Toys, including without limitation bicycles and play equipment, must be stored within a Unit or storage unit, and may not be stored within the Common Elements or on balconies or patios. Unattended articles may be confiscated and disposed of by the Association at the applicable Owner's expense.

**Section 7.18 Satellite Dishes, Antennas, etc.** Owners are prohibited, to the maximum extent permitted by law, from attaching, installing, displaying or affixing satellite dishes, antennas or other transmitting devices, to the exterior of a Building or on the Land.

**Section 7.19 Balconies and Patios.** The balcony and porch areas shall be kept in a clean, neat, and orderly condition at all times, and shall not be used for the storage of bicycles, overnight storage of garbage, or for the drying of laundry. In particular, towels or banners shall



not be hung on the balcony or patio railings, and any dead plants shall be removed promptly. The Association may implement rules and regulations on use and storage of grills on patios and balconies, and grills may only be used on the Property in compliance with any such rules and regulations, any governmental requirements, and any insurance requirements. There shall be no exterior lighting (except for any lighting installed by Declarant) including but not limited to holiday lighting. No fake/faux/plastic flowers or greenery may be displayed on balconies or patios. No fencing or screening shall be installed on the patio or balcony appurtenant to any Unit.

## ARTICLE VIII. THE ASSOCIATION

Section 8.1 Organization of Association. A nonprofit North Carolina corporation known and designated as The 213 East Franklin Street Condominiums Owners Association, Inc. (the "Association") has been organized to provide for the administration of the Property, and the Association shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and the North Carolina Condominium Act. Every Owner shall be required to be and shall automatically be a member of the Association by virtue of its ownership interest in a Unit.

Section 8.2 Powers, Lien for Assessment. In the administration of the operation and management of the Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect assessments in the manner provided in Article X below and as set forth in the paragraph below, and adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Association may deem to be in the best interest of the Owners in accordance with this Section 8.2 and the Bylaws. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit with respect to which such sum was assessed upon filing in accordance with N.C.G.S. § 47C-3-116, and shall be enforceable by the Association in accordance with N.C.G.S. § 47C-3-116 and Section 8 of the Bylaws. The Executive Board shall from time to time, and at least annually, prepare and adopt a proposed budget for the Condominium, determine the amount of the Common Expenses payable by the Owners to meet the proposed budget of the Condominium, and allocate and assess such proposed Common Expenses among the Owners in shares (based upon the percentage interest in the Common Elements allocated to each Unit), all in accordance with the procedure set forth in this Section 8.2, and this Declaration. The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Executive Board pursuant to the provisions of the Declaration. The Common Expenses shall also include such amounts as the Executive Board deems necessary for the operation and maintenance of the Property, including without limitation, an amount for working capital of the Condominium; an amount for a general operating reserve; an amount for a reserve fund for losses due to insurance deductibles; an amount for a reserve fund for repair and replacement of the Common Elements; and such amounts as may be necessary to make up any



deficit in the Common Expenses for any prior year. Within thirty (30) days after adoption of any proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to all the Owners. To the extent required by law, such notice shall include notice of a meeting of the Owners to consider ratification of the budget, including a statement that the budget may be ratified without a quorum. If such a meeting is required by law, the Executive Board shall set a date for a meeting of the Owners to consider ratification of the budget to be held not less than fourteen (14) nor more than thirty (30) days after mailing of the summary and notice. If such meeting is required as set forth above, there shall be no requirement that a quorum be present at the meeting. The proposed budget to be voted on at any such meeting shall be ratified unless at such meeting the Owners exercising a majority of the votes in the Association reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Executive Board.

The Association, acting through the Executive Board, may levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement comprising or to comprise a portion of the Common Elements, including fixtures and personal property; provided, however, that any such special assessment must be approved by the vote of Owners of Units, to which at least sixty-seven percent (67%) of the votes in the Association are allocated cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws.

The Association shall collect from each purchaser of a Unit at the time of closing (both initial sales by Declarant and subsequent re-sales) a "working capital assessment" equal to three times the estimated monthly assessment for Common Expenses. Such funds shall not be considered advance payments of assessments. The funds so collected shall provide the necessary working capital for the Association. Such funds may be used for certain prepaid items, equipment and supplies, and for such other purposes as the Executive Board may determine.

Section 8.3 Declarant Control Period. During the Declarant Control Period, Declarant reserves the right to appoint and remove any Executive Board members; provided, however, (i) that not later than 60 days after conveyance of twenty-five percent (25%) of the Units to Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Executive Board shall be elected by Owners other than Declarant; and (ii) that not later than 60 days after conveyance of fifty percent (50%) of the Units to Owners other than Declarant, not less than thirty-three percent (33%) of the members of the Executive Board shall be elected by Owners other than Declarant.

Section 8.4 Books and Records. The Association shall maintain current copies of: (a) the Condominium Documents, as they may be amended from time to time, (b) any rules and regulations adopted under Section 7.15 from time to time; and (c) all financial records of the Association, as required by N.C.G.S. § 47C-3-118. These items shall be available for inspection, during normal business hours and upon reasonable advance notice, by any Owner, any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage.



Section 8.5 Lawsuits. Except as otherwise provided herein, the Executive Board shall, prior to filing any action, suit or proceeding on behalf of the Association, call a special meeting of the Association in accordance with the Bylaws. A quorum must be present at such special meeting, and Association members holding a majority of all votes in the Association must approve the filing or initiation of such action, suit or proceeding. This Section 8.5 shall not apply to any action brought by the Association to collect unpaid assessments or to foreclose the Association's lien upon a Unit in accordance with Section 8.2 above.

Section 8.6 Voting. Unit Allocations. The Common Elements Interests are described in Section 1.7 and are stated on Exhibit B. The votes in the Association are allocated to Units such that each Unit's voting interest shall be equal to its Common Elements Interest rounded to the nearest whole percent. *For example, the Common Elements Interest allocated to Unit 1-A as shown on Exhibit B is equal to 15.72% (round to 16%), so if there are 100 total votes in the Association, sixteen (16) shall be allocated to Unit 1-A.*

## ARTICLE IX. EASEMENTS AND PROPERTY RIGHTS

Section 9.1 Access by the Association. The Association, or any person authorized by it, shall have the right of access to each Unit and to the Limited Common Elements to the extent necessary for performance by the Association of its obligations of maintenance, repair, or replacement of the Property, provided that the Association shall first arrange a convenient time with the Owner, and shall give the Owner twenty-four (24) hours notice except in the event of an emergency, as set forth in Section 9.4.

Section 9.2 Encroachment Easements. If any portion of the Common Elements now encroaches upon any Unit, or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements, or if such encroachment shall occur hereafter as a result of the settling or shifting of the Building, there shall exist a valid easement for the encroachment and for the maintenance of same for so long as the Building shall stand. If the Building, any Unit, or any portion of the Common Elements is partially or totally destroyed by fire or other casualty or as a result of condemnation or eminent domain proceedings, and subsequently is rebuilt, any encroachment of parts of the Common Elements upon any Unit, or of parts of any Unit upon the Common Elements, due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building shall stand.

Section 9.3 Easements over Common Elements. Declarant, until the Property has been completely developed, and the Association, at any time, 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; and water lines; gas mains; telephone and television or cable television wires, cables and equipment; electrical conduits; and wires over, under, along and on any portion of the Common Elements (other than the Limited Common Elements); and each Owner hereby grants to Declarant or the Association, as applicable, an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Owner such instruments as may be necessary to effectuate the foregoing. Until the Property has



been completely developed, Declarant shall have an easement over the Common Elements as may be reasonably necessary to complete any construction in the Building. All such easement rights described in this Section 9.3 shall be appurtenant to, and shall run with title to, the Property.

Section 9.4 Emergency Access. In case of any emergency originating in or threatening any Unit or the Common Elements, 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 or its Limited Common Elements 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. Any public body rendering police and fire services is granted an easement over, upon and through the Common Elements and Limited Common Elements for the purpose of providing police and fire protection services and to enforce all applicable police and fire regulations.

Section 9.5 Relocation of Boundaries: Subdivision: Partitioning.

- (a) Relocation of Boundaries Between Adjoining Units. The boundaries between adjoining Units may be relocated upon application to the Association by the Owners of such adjoining Units ("Adjoining Owners") and upon approval by the Association of such application; provided, however, that no such relocation of boundaries shall be binding upon any Mortgagee holding a Mortgage on any Unit whose boundaries are relocated, unless consented to in writing by such Mortgagee. Any such application to the Association must be in such form and contain such information as may be reasonably required by the Association, and shall be accompanied by, a plat detailing the proposed relocation of boundaries. Unless the Association determines within thirty (30) days after submission to it of the application that the proposed relocation of boundaries is unreasonable or would impair the structural integrity of the Building, the application shall be deemed approved. The Common Elements Interest for such Units affected by such relocation of boundaries shall be recalculated in accordance with the new heated square footage of such Units, provided that the new heated square footage of all such Units shall total the old heated square footage of such Units, and the amendment to the Declaration shall specify the Common Elements Interest allocated to such Units. Upon approval of the proposed relocation of boundaries, the Association shall cause to be prepared and filed, at the Adjoining Owners' expense, an amendment to this Declaration and a plat which identifies the Units involved, describes and depicts the altered boundaries, and gives the dimensions of the altered Units. Such amendment shall also contain operative words of conveyance and be signed by the Adjoining Owners and consented to by their Mortgagees, if any, and shall be indexed by the Register of Deeds in the names of the Adjoining Owners.