

COPY

DECLARATION OF CONDOMINIUM
FOR
FACTORY SOUTH CONDOMINIUMS

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Exhibits A and B

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Moore & Van Allen, PLLC (JCO)
(Box 39)

DECLARATION OF CONDOMINIUM
FOR
FACTORY SOUTH CONDOMINIUMS

THIS DECLARATION OF CONDOMINIUM (this "Declaration") is made this 4th day of February, 1997, by FACTORY SOUTH DEVELOPMENT, L.L.C., a North Carolina limited liability company ("Declarant").

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property and improvements located thereon in the City of Charlotte, Mecklenburg County, North Carolina, and more particularly described on Exhibit A attached hereto (the "Property").

NOW, THEREFORE, Declarant hereby declares that the Property shall be held, sold, conveyed, encumbered, used, occupied, developed and improved subject to the following easements, restrictions, covenants, conditions, uses, limitations, and obligations, all of which are declared to be in furtherance of a plan for the development of the Property into a condominium, 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 inure to the benefit of each owner of any interest thereof.

PART I
DEFINITIONS

Section 1: "Association" means Factory South Owners Association, Inc., its successors and assigns.

Section 2: "Bylaws" means the bylaws of the Association.

Section 3: "Common Elements" means all portions of the Condominium other than the Units.

Section 4: "Common Expenses" means expenses incurred by the Association for the maintenance, repair and replacement of the Common Elements, including the Limited Common Elements.

Section 5: "Condominium" means the real estate described on Exhibit A, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions.

Section 6: "Declarant" means Factory South Development, L.L.C., a North Carolina limited liability company, its successors and assigns.

Section 7: "Declaration" means this Declaration of Condominium.

Section 8: "Executive Board" means the body designated in this Declaration to act on behalf of the Association.

Section 9: "Limited Common Elements" means a portion of the Common Elements allocated by this Declaration for the exclusive use of one or more but fewer than all of the Units.

Section 10: "Member" means every person or entity who holds membership in the Association.

Section 11: "Owner" means the record owner, whether one or more persons or entities, of a fee simple title to any Unit which is a part of the Property, together with an undivided interest in the Common Elements as hereinafter set forth, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 12: "Parking Deck" means the two-level off-street parking deck, the ground level of which shall be a Limited Common Element allocated to the residential Units and the second level of which shall be a Limited Common Element allocated to the commercial Unit.

Section 13: "Period of Declarant Control" means the period commencing on the date hereof and continuing until the earliest of (i) 120 days after conveyance of seventy-five percent (75%) of the Units (including any Units which may be created pursuant to Special Declarant Rights) to Unit Owners other than Declarant; (ii) two years after Declarant has ceased to offer Units for sale in the ordinary course of

business; (iii) two years after any development right to add new Units was last exercised; or (iv) three years after the first Unit is conveyed.

Section 14: "Plat" means the plat recorded at Unit File No. _____ of the Mecklenburg County Register of Deeds.

Section 15: "Special Declarant Rights" means those rights of the Declarant as set forth in Article I, Section 8 of this Declaration.

Section 16: "Unit" means a physical portion of the Condominium designated for separate ownership or occupancy. The boundaries of each Unit shall consist of the unfinished perimeter walls, floors and ceilings as shown on the Plat. All interior surfacing materials, including all wallboard, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished surfaces of the interior walls, floors or ceilings of each Unit shall be a part of that respective Unit. In addition, all spaces, interior partitions, pipes, ducts, wires, conduits, fixtures, appliances, cabinets and other such facilities or improvements lying completely within the boundaries of a Unit shall be a part of such Unit.

PART II - DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

ARTICLE I GENERAL

Section 1: Declarant hereby submits the Property to the provisions of the North Carolina Condominium Act (N.C. Gen. Stat. § 47-C, et seq.), as amended from time to time (the "North Carolina Condominium Act"). The Property will be administered in accordance with the provisions of the North Carolina Condominium Act, this Declaration, and the Bylaws.

Section 2: The name of the Condominium shall be "Factory South Condominiums".

Section 3: The Property is located in Mecklenburg County, North Carolina.

Section 4: The maximum number of Units for residential ownership (the intended uses of which are set forth in Article VII, Section 1 of this Declaration) which Declarant reserves the right to create is eighty-five (85). The maximum number of Units for commercial use (the intended uses of which are set forth in Article VII, Section 1 of this Declaration) which Declarant reserves the right to create is one (1), subject to the provisions of Section 5 hereafter.

Section 5: Declarant does hereby establish within the Property eighty-five (85) residential Units and one (1) commercial Unit, and does hereby designate all such Units for separate ownership. Notwithstanding the foregoing, the Declarant or any subsequent Owner of the commercial Unit may, in its sole discretion, lease portions of the commercial Unit to commercial tenants and/or subdivide the commercial Unit and from subdivisions thereof create additional separate commercial condominium Units for sale in accordance with the provisions of N.C. Gen. Stat. § 42C-2-113. Reference is hereby made to the Plat for a separate description of the boundaries of each Unit, identified by number, said Plat being by this reference incorporated herein.

Section 6: Each Owner shall be a member of the Association. With respect to matters on which all Owners are entitled to vote, the Owner of a Unit shall have a percentage of the total number of votes equal to the percentage of undivided interests in the Common Elements appertaining to such Unit except that (a) the Articles of Incorporation of the Association provide for cumulative voting for the election of the Executive Board, and (b) the Owner(s) of the commercial Unit shall have three (3) times the number of votes it otherwise would have for purposes of voting on the amount and scope of maintenance costs and expenses for, the use of, and the transfer or encumbrance of the first floor Common Elements. The total number of votes of all Owners shall be one hundred (100) except as adjusted in (b) above.

With respect to matters on which only a particular class of Owners is entitled to vote, the percentage vote of each Owner entitled to vote on a particular matter shall be adjusted to reflect the relative percentages of undivided interests in the Common Elements among all such Owners. The total

number of votes of all Owners of a particular class entitled to vote on a particular matter shall be one hundred (100).

Section 7: There are no Limited Common Elements with the exception of the Limited Common Elements created under Articles II and IV.

Section 8: Declarant reserves the following Special Declarant Rights for the Property, which shall be exercisable during the Period of Declarant Control:

(a) To design, construct, complete and exercise control over the course of development of any and all improvements indicated on the Plat;

(b) To construct and maintain any sales office, management office, signs advertising the Condominium, or model in any of the Units or on any of the Common Elements shown on the Plat;

(c) To alter the size of any Unit, combine or merge two or more Units, and subdivide any Unit;

(d) To appoint and remove any officer of the Association or any Executive Board members during the Period of Declarant Control; provided, however, (i) that not later than 60 days after conveyance of twenty-five percent (25%) of the Units (including Units which may be created pursuant to Special Declarant Rights) 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 the Declarant; and (ii) that not later than 60 days after conveyance of fifty percent (50%) of the Units (including Units which may be created pursuant to Special Declarant Rights) 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 the Declarant. Notwithstanding the foregoing, Declarant may voluntarily surrender the right to appoint and remove officers and members of the Executive Board before termination of the Period of Declarant Control, but in that event the Declarant may require, for the duration of the Period of

Declarant Control, that specified actions of the Association or Executive Board be approved by the Declarant before they become effective.

ARTICLE II PROPERTY RIGHTS

Section 1: Ownership of a Unit shall vest fee simple title to such Unit in the Owner. In the event an Owner may own more than one Unit and such Units are located contiguous to each other, such Owner may elect to combine the Units so long as such Owner complies with the rules and regulations reasonably promulgated from time to time by the Declarant or the Association, as the case may be, with respect to construction related matters (including, without limitation, hours of construction to prevent disruption to the other Owners, compliance with engineering and structural matters, review and approval of the plans and specifications therefor by the Declarant and the Association, and such other construction related matters).

Section 2: Every Owner shall own an undivided interest in the Common Elements, and except to the extent that certain Limited Common Elements have been allocated hereunder for the exclusive use of one or more Owner, every Owner shall have a right and easement of enjoyment in the Common Elements and an unrestricted right of ingress and egress across the Common Elements to his, her or its Unit. Such right and easement of enjoyment and of ingress and egress shall be appurtenant to and shall pass with the title to every Unit. The undivided interest of every Unit Owner in the Common Elements shall be in the percentage set forth in Exhibit B attached hereto. In addition, the undivided interest in the Common Elements and the right and easement of enjoyment in such Common Elements are subject to the following:

- (a) the Association shall have the right to adopt such rules and regulations as may be needed to regulate the use and enjoyment of the Common Elements;
- (b) the Declarant shall have the right to exercise the Special Declarant Rights as set forth in Article I, Section 8; and

(c) the Association shall have the right to dedicate or transfer, or encumber all or any part of the Common Elements subject to approval by the Owners as provided in the North Carolina Condominium Act.

Section 3: Any Owner may delegate his, her or its right of enjoyment to the Common Elements to members of his, her or its family or tenants. In addition, the Declarant and any subsequent Owner of the commercial Unit may allow certain areas of the first floor Common Elements to be used by tenants of the commercial Unit or Owners of commercial condominium Units subdivided therefrom, provided that such use does not materially interfere with the use and enjoyment of the Common Elements by the residential Unit Owners.

Section 4: The Property shall include the Parking Deck which shall be a Limited Common Element as set forth in Article IV hereof.

ARTICLE III COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1: The Declarant, for each Unit owned within the Property, and each Owner by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, hereby covenants and agrees to pay the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. Except as otherwise set forth herein, the liability of each Owner for the Common Expenses of the Association shall be in accordance with the respective percentages of ownership interest in the Common Elements of the Property owned by the respective Unit Owners, as provided in Exhibit B, and allocation of full assessments based on such percentages of ownership interest shall be made no later than 60 days after the first Unit is conveyed. Notwithstanding the preceding provisions to the contrary, upon the expiration of the Period of Declarant Control, the amount of assessments levied against any unsold and unoccupied Units owned by Declarant shall not exceed the lesser of (1) assessments at the rate then charged by the

Association and (2) the actual Common Expenses incurred by the Association in connection with the maintenance, repair and replacement of the Common Elements for such unsold and unoccupied Units.

Any Common Expense associated with the maintenance, repair or replacement of a Limited Common Element may, in the discretion of the Executive Board, be assessed against the Unit, or in equal shares to the Units, to which such Limited Common Element was allocated at the time the expense was incurred. Fees (including reasonable attorneys' fees), charges, late charges, fines, and interest thereon are also enforceable as assessments. Each assessment shall be the personal obligation of the person who was the Owner of such property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to an Owner's successors in title unless expressly assumed by such successors.

Section 2: Any assessment levied against a Unit remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on that Unit when filed of record in the office of the Clerk of Superior Court of Mecklenburg County and shall accrue interest at a rate set by the Association not to exceed 18% per annum. In addition to any other remedies available to the Association by law for the collection of any past due assessments, the Association may enforce the lien by bringing an action at law against the Owner, or by foreclosing the lien against the Unit.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage or tax foreclosure 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. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereof.

Section 3: The annual assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and in particular for the acquisition,

improvement, insurance and maintenance of the Condominium, services and facilities devoted to this purpose, and for the use and enjoyment of the Common Elements.

The Association also may levy a special assessment payable in a manner as specified by the Association for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of a majority of the members.

Section 4: The Executive Board shall establish annual assessments in accordance with the Bylaws of the Association.

Section 5: Both annual and special assessments must be fixed at a uniform rate for all Units and may be collected on a monthly basis, however the amount of assessments per Unit will vary in accordance with the terms of Section 1 of this Article III.

Section 6: The annual assessments provided for herein shall commence at a date established by the Association. Once such annual assessments are established, written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Executive Board.

ARTICLE IV **LIMITED COMMON ELEMENTS**

Section 1: The unfinished walls, floors and ceilings, lying beneath the interior surfacing materials thereof, if any, and connecting adjacent Units are "party walls". Such Party Walls are situated on or about the boundary line separating adjacent Units, and are Limited Common Elements allocated to such Units.

Section 2: All exterior doors and windows or other fixtures designed to serve a single Unit but located outside the Unit's boundaries are Limited Common Elements allocated exclusively to that Unit. To the extent any pipe, chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other

fixture or improvement lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated exclusively to that Unit, and any portion thereof serving more than one Unit is a Limited Common Element allocated exclusively to such Units.

Section 3: Entryways, lobby areas and hallways providing access exclusively to the residential Units shall be Limited Common Elements allocated exclusively to the residential Units.

Section 4: Eighty-five (85) vehicular parking spaces on the ground level of the Parking Deck shall be Limited Common Elements allocated exclusively to the residential Units. Each Owner of a residential Unit shall have the right to use one (1) parking space on the ground level of the Parking Deck in accordance with the use restrictions related thereto as set forth in Article VII, Section 7 of this Declaration.

The second level of the Parking Deck and eighteen parking spaces located in a courtyard outside the commercial Unit shall be a Limited Common Element allocated exclusively to the commercial Unit. Use of the second level of the Parking Deck and the eighteen (18) spaces located in the courtyard shall be in accordance with Article VII, Section 7 of this Declaration. Declarant or any subsequent owner of the commercial Unit shall be entitled to erect and maintain gates or other means of control to insure that the second level of the Parking Deck and the eighteen (18) spaces in the courtyard are used by commercial Unit owners, their tenants and their invitees only.

Section 5: Each wall which is built as a part of the original construction of a Unit and placed on the dividing line between the Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 6: The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, as determined by the Executive Board.

Section 7: Notwithstanding any other provisions of this Article, an Owner who by his or her negligent or willful act causes a party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 8: The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 9: If any Owner desires to sell his, her or its Unit, such Owner, in order to assure a prospective purchaser that no adjoining Unit Owner has a right of contribution as provided in this Article IV, may request of the adjoining Unit Owner a certification that no right of contribution exists, whereupon it shall be the duty of the adjoining Unit Owner to make such certification immediately upon request and without charges; provided, however, that where the adjoining Unit Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

Section 10: In the event of any dispute arising concerning a party wall, or under the provisions of this Article, such dispute shall be settled by arbitration in Charlotte, North Carolina in accordance with the commercial rules of the American Arbitration Association then attending whose determination shall be binding upon the Declarant and the Owner, or the Owner and the adjoining Unit Owner, as the case may be.

ARTICLE V **MAINTENANCE**

Section 1: The Association shall maintain the Common Elements, including the Limited Common Elements, and shall provide exterior maintenance for each Unit, subject to assessment hereunder, including, but not limited to, the performance of the following, as needed: paint, repair, replacement and care of roofs, exterior building surfaces, the Parking Deck, trees, shrubs, grass and lawn areas, courtyards, walks, exterior glass surfaces and other exterior improvements.

Section 2: In the event that the need for maintenance, repair, or replacement is caused through the willful or negligent act of an Owner, his, her or its family, guests, invitees, or tenants, the cost of such maintenance, replacement, or repairs shall be added to and become a part of the assessment to which such Unit is subject.

Section 3: Each Unit Owner shall be responsible for the maintenance, repair and replacement of his, her or its own Unit.

ARTICLE VI ARCHITECTURAL CONTROL

No structure or other improvement shall be commenced, erected or maintained upon the Condominium, including, without limitation, any improvements to the interior or exterior of any Unit (except for purely cosmetic changes to the interior of a Unit such as painting or installing wallpaper), nor shall any exterior addition or change therein 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 Declarant during the Period of Declarant Control, and the Executive Board thereafter. In no event shall any change be made to the plumbing, mechanical, electrical or fire protection systems within or outside of any Unit until and unless the plans and specifications showing the nature, kind, shape, height, materials and location of the change shall have been submitted to and approved in writing by the Declarant during the Period of Declarant Control and the Executive Board thereafter. In the event that any such change requires a permit from any governmental or regulatory authority, such permit shall be obtained by the party requesting the change, and a copy of such permit shall be delivered to the Declarant during the Period of Declarant Control and the Executive Board thereafter.

ARTICLE VII
USE RESTRICTIONS

Section 1: The residential Units may be used only for the following purposes: for residential uses, including the rental of residential Units as apartments for temporary housing, subject to such limitations as may be contained herein or in the Bylaws of the Association and the House Rules and Regulations relating to the residential Units which may be reasonably adopted by a majority of the Owners of the residential Units from time to time governing the use of the residential Units; as studios for artistic or other studio uses as permitted under the provisions of the Uptown Mixed Use District (UMUD) Zoning District of the City of Charlotte, North Carolina in effect as of the date hereof, provided such use shall not cause, generate, emit or result in odors, vibrations, noises or any other nuisances which shall be offensive, annoying or noxious to Declarant or other Owners; and for customary home occupations as permitted under the Zoning Ordinance of the City of Charlotte, North Carolina in effect as of the date hereof. With respect to any non-residential use conducted within a residential Unit as permitted herein, no display of products shall be visible from the outside of a Unit and only articles made within the Unit may be sold from the Unit, which sales shall occur only during regular business hours. Any non-residential use of a residential Unit shall be consistent with the nature and use of the Units used solely for residential purposes and shall at all times conform to the rules and regulations therefor initially promulgated by the Declarant and, thereafter, adopted by the Association. The lease or rental of any Unit must be evidenced by a written agreement, and must be subject to this Declaration, the Bylaws and the House Rules and Regulations of the Association. In no event may the residential Units be used for hotel purposes. Any renting of the residential Units must be for a term of no less than thirty (30) days.

The commercial Unit may be used for commercial uses permitted under the UMUD Zoning District of the City of Charlotte, North Carolina in effect as of the date hereof, and if leased, space within the commercial Unit shall be leased for such purposes to commercial tenants pursuant to written lease agreements. The commercial Unit shall be subject to such limitations as may be contained herein or in the

Bylaws of the Association and commercial Unit Rules which may be reasonably adopted from time to time by the Owner of the commercial Unit governing the use of the commercial Unit.

Section 2: No noxious or offensive activity shall be conducted upon any Unit nor shall anything be done thereon which may be or may become an annoyance or nuisance. No Owner, tenant of any Owner or occupant of any Unit shall use, keep or suffer to be kept, generate, store or release or discharge any hazardous substances, pollutants or contaminants in, upon or around the Condominium or any portions thereof.

Section 3: No animals, livestock or poultry of any kind shall be kept or maintained on any Unit or in any dwelling except that dogs, cats or other animals determined by the Executive Board to be household pets (excluding snakes, pigs, large birds or fish tanks in excess of 100 gallons) may be kept or maintained provided that they are not kept or maintained for commercial purposes. In deciding whether a proposed pet is permissible, the Executive Board shall consider: health, safety, and comfort considerations of the Owners; legal restrictions; humane considerations for the animal; the purpose and intent of the Condominium documentation; traditional household character of the animal; and such other relevant factors as the Executive Board deems appropriate to the specific circumstances. All household pets shall be kept on a leash at all times when outside the Units or on any Common Elements. No pet may be left unattended on the Common Elements. Pets shall not be permitted to defecate on any Common Element. Pet owners must clean up after pets immediately if an accident occurs on the Common Elements. Pets shall be controlled so as not to create a nuisance anywhere on the Property. A Unit Owner is responsible for the actions of the pets of anyone residing in or visiting such Owner's Unit, and the costs of repairing any damage caused by a pet shall be charged to the Unit Owner responsible as a part of such Owner's share of the Common Expenses.

Section 4: No outside radio or television antennas, including satellite dishes or receivers, shall be erected on any Unit unless and until permission for the same has been granted by the Executive Board.

Section 5: No signs shall be permitted on or about the residential Units except as otherwise permitted by the Executive Board with respect to such residential Units. Signage regulations as to the commercial Unit shall be in the sole discretion of Declarant or any subsequent Owner of the commercial Unit, provided such signage shall be limited to the commercial Unit and exterior portions thereof.

Section 6: All window coverings (i.e., curtains, blinds, draperies, shades, etc.) shall appear white or off-white from the exterior.

Section 7: Owners of residential Units may park only in those areas designated for use by Owners of residential Units. Each Owner of a residential Unit shall have the use of one (1) parking space on the ground level of the Parking Deck. During the Period of Declarant Control, parking spaces may be assigned by the Declarant, in its sole discretion, and thereafter by the Association. Owners of residential Units may not allow their parking spaces to be used by any individual who does not reside in a Unit (either as an Owner or as a tenant). Use of the second level of the Parking Deck shall be limited to the Owner(s) and/or tenants of the commercial Unit, their invitees and licensees.

ARTICLE VIII **EASEMENTS**

Section 1: Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may obstruct or change the flow of drainage channels in the easements.

Section 2: All Units and Common Elements shall be subject to easements for the encroachment of improvements constructed on adjacent Units by the Declarant to the extent that such improvements actually encroach, including, but not limited to, such items as misaligned common wall foundation footings and walls, provided such encroachment does not interfere with the reasonable use of the Common Elements or Units so encroached upon. Any encroaching structure which has been installed, constructed

or reconstructed by the Declarant or its successor shall be maintained as a Common Element by the Association.

Section 3: Declarant shall have a reasonable construction easement across the Common Elements for the purpose of constructing improvements on the Units. Declarant also shall have such easements through the Common Elements as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights as provided herein.

Section 4: The Association shall have a right of entry upon the Units and any Limited Common Elements to effect emergency repairs, and a reasonable right of entry upon the Units to effect other repairs, improvements, replacement or maintenance as necessary.

Section 5: Declarant shall have an easement through the Common Elements for ingress and egress, utility service lines and for other reasonable purposes.

Section 6: All easements granted herein are appurtenant to and shall run with the land, and shall inure to the benefit of and be binding upon the Declarant, the Association, Owners, occupants, and mortgage holders, and any other person or entity having an interest in the Condominium.

ARTICLE IX **RIGHTS OF MORTGAGE HOLDERS, INSURERS & GUARANTORS**

Section 1: In addition to any other rights granted herein to certain holders, insurers and guarantors of first mortgages on Units, any holder, insurer or guarantor of a mortgage or deed of trust on any Unit shall have the right to timely written notice of:

(a) any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing its mortgage;

(b) any 60-day delinquency in the payment of assessments or charges owed by the owner of any Unit on which it holds the mortgage;

(c) a lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(d) any proposed action that requires the consent of a specified percentage of mortgage holders.

Provided, however, that the notification rights granted above shall be available only to those mortgage holders, insurers or guarantors who have submitted a written request to the Association requesting such notification. Said written request shall include the name and address of the party making such request, and shall identify the Unit on which it has (or insures or guarantees) the mortgage.

ARTICLE X GENERAL PROVISIONS

Section 1: All powers granted to the Association by this Declaration or the Bylaws shall be exercisable by the Executive Board, except as expressly provided in this Declaration, the Bylaws, or the North Carolina Condominium Act.

Section 2: Subject to Section 1 of Article VII, the Association may adopt and enforce reasonable rules and regulations not in conflict with this Declaration and supplementary thereto, as more fully provided in the Bylaws.

Section 3: The Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, the bylaws and articles of incorporation of the Association. Failure by the Association to enforce any covenant or restrictions therein shall in no event be deemed a waiver of the right to do so thereafter.

Upon notice to the Association of a violation hereunder and a failure of the Association to take action upon said violation within ninety (90) days, any Unit Owner, or other holder of an interest in the

Condominium may undertake the enforcement of the provisions of this Declaration at his, her or its own expense.

Section 4: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 5: The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be extended automatically for successive periods of ten (10) years.

Section 6: This Declaration may be amended during the first 20-year period by an instrument signed by not less than ninety percent (90%) of the Unit Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Owners. In addition, where an amendment is deemed to be of a material nature pursuant to applicable standards of the Federal National Mortgage Association ("FannieMae") or its successors, the amendment must be approved by a majority of holders of a mortgage or deed of trust on any Unit who have submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of eligible mortgage holders. In order to be effective, all amendments must be filed for record in the Office of the Register of Deeds for Mecklenburg County, North Carolina.

Section 7: The fiscal year of the Association shall begin on the first (1st) day of July and end on the thirtieth (30th) day of June of each calendar year, except that the first fiscal year shall begin on the date of incorporation.

Section 8: The Consents of Lender attached hereto are incorporated by reference as if fully set forth herein.

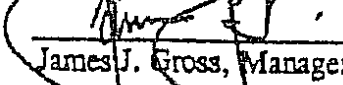
Section 9: Any action to terminate the legal status of the Condominium in connection with the substantial destruction or condemnation thereof must be approved by a majority of the holders of first mortgages or deeds of trust on Units who have submitted a written request that the Association notify


them of any proposed action requiring the consent of a specified percentage of such eligible mortgage holders. Any action to terminate the legal status of the Condominium for reasons other than the substantial destruction or condemnation must be approved by sixty-seven (67%) of the holders of first mortgages or deeds of trust on Units who have submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of such eligible mortgage holders.

Section 10: Notwithstanding anything to the contrary contained herein, whenever the consent of a certain percentage of mortgage holders is required for any proposed action taken pursuant to this Declaration, and a mortgage holder is required for any proposed action taken pursuant to this Declaration, and a mortgage holder fails to respond to a written proposal for such action within thirty (30) days after receiving proper notice thereof (provided such notice is delivered by certified or registered mail, with return receipt requested), the approval of such mortgage holder shall be presumed.

IN WITNESS WHEREOF, Declarant has caused its name to be signed hereto.

FACTORY SOUTH DEVELOPMENT, L.L.C.,
a North Carolina limited liability company (SEAL)

By:  (SEAL)
James J. Gross, Manager

By:  (SEAL)
William B. Allen, Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Tracie R Boone, a Notary Public of the County and State aforesaid, certify that James J. Gross, Manager of Factory South Development, L.L.C., a North Carolina limited liability company, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the limited liability company as manager of said limited liability company.

Witness my hand and official stamp or seal, this 4th day of February, 1994.⁷

Tracie R Boone
Notary Public

My Commission Expires:

February 7, 2001

[NOTARY SEAL]

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, Tracie R Boone, a Notary Public of the County and State aforesaid, certify that William B. Allen, Manager of Factory South Development, L.L.C., a North Carolina limited liability company, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the limited liability company as manager of said limited liability company.

Witness my hand and official stamp or seal, this 4th day of February, 1994.⁷

Tracie R Boone
Notary Public

My Commission Expires:

February 7, 2001

[NOTARY SEAL]

CONSENT OF LENDER

CENTURA BANK ("Lender"), owner and holder of a note secured by that certain Deed of Trust and Security Agreement (Future Advances) recorded in Book 8367 at Page 695 in the Mecklenburg County Public Registry (the "Deed of Trust") and that certain North Carolina Collateral Assignment and Chattel Mortgage recorded in Book 8367 at Page 705 in the aforesaid Public Registry (the "Assignment") and C B SERVICES CORP., Substitute Trustee ("Trustee") under the Deed of Trust hereby agree that they have consented to the terms and conditions of this Declaration of Condominium for Factory South Condominiums (hereinafter called the "Declaration"); that any subsequent foreclosure of the Deed of Trust secured by the property described therein shall not extinguish this Declaration but shall merely vest in Lender the rights and duties set forth herein, provided, however, that should Lender acquire title to the property secured by these Deed of Trust, any liability Lender shall have for the duties set forth in the Declaration shall be non-recourse except to the extent of its interest in such property; that all present and future owners of any of the property described in the Declaration shall be entitled to the full rights and easements to the extent the same are granted herein; and that upon payment of the loan secured by the Deed of Trust and the Assignment, the rights of Lender and Trustee (or such successor trustees as permitted by the Deed of Trust) set forth in this Declaration shall terminate.

IN WITNESS WHEREOF, the undersigned have duly executed these presents under seal as of the 4th day of February, 1997.

CENTURA BANK,
a North Carolina banking corporation

By: [Signature]

Vice President

ATTEST:

Cecilia B. Thomas
Asst. Secretary

[CORPORATE SEAL]



ATTEST:

Cecilia B. Thomas
Asst. Secretary

[CORPORATE SEAL]

C B SERVICES CORP.,
a North Carolina corporation

By: [Signature]

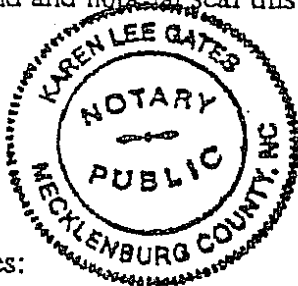
Vice President

NORTH CAROLINA

MECKLENBURG COUNTY

I, Karen Lee Gates, a Notary Public of the aforesaid County and State, do hereby certify that Cecelia B Thomas personally appeared before me this day and acknowledged that (s)he is the Asst Secretary of Centura Bank, a North Carolina banking corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its Vice President, and attested by herself/himself as Asst Secretary, and sealed with its common corporate seal.

Witness my hand and notarial seal this 4th day of February, 1997.



Karen Lee Gates
Notary Public

My Commission Expires:

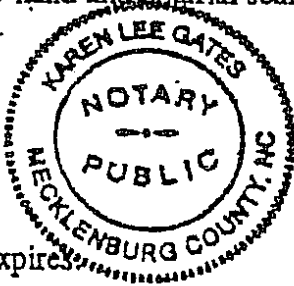
My Commission Expires May 9, 1999

NORTH CAROLINA

MECKLENBURG COUNTY

I, Karen Lee Gates, a Notary Public of the aforesaid County and State, do hereby certify that Cecelia B Thomas personally appeared before me this day and acknowledged that (s)he is the Asst Secretary of CB Services Corp., a North Carolina corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its Vice President, and attested by herself/himself as Asst Secretary, and sealed with its common corporate seal.

Witness my hand and notarial seal this 4th day of February, 1997.



Karen Lee Gates
Notary Public

My Commission Expires:

My Commission Expires May 9, 1999

EXHIBIT A

Legal Description of Property

Lying and being situated in the City of Charlotte, Mecklenburg County, North Carolina and being more particularly described as follows:

BEGINNING at an iron found at the point of intersection of the northwesterly margin of the right of way of South Boulevard and the westerly margin of the right of way of Arlington Avenue and running thence from said beginning point with the northwesterly margin of the right of way of South Boulevard S 48-29-25 W 300.00 feet to an iron found in the easterly margin of the right-of-way of East Bland Street; thence following along the easterly margin of the right of way of East Bland Street N 33-59-41 W 409.63 feet to a pk nail found, said pk nail being located in the right of way of the Southern Railroad Track; thence following along the right of way of the Southern Railroad Track N 52-40-12 E 297.87 feet to an iron found, said iron being located on the southwesterly margin of Arlington Avenue; thence along the aforesaid southwesterly margin of the right of way of Arlington Avenue S 34-00-14 E 387.72 feet to an iron found, this being the **Point or Place of Beginning**, containing 118,566 square feet, more or less and being designated as Tract 1 on the Boundary and Topographic Survey for Gross Associates by F. Donald Lawrence & Associates, P.A., F. Donald Lawrence, RLS (L-1290) dated October 14, 1995 and revised October 27, 1995 (Job No. 0594, Drawing file LANCEGSX.DWG).

EXHIBIT B

Percentage of Undivided Interest in the Common Elements

Unit Type	Unit SF	Percentage of Ownership	Number of Units	Total Percent by Unit Type
Residential Unit 1	2,246	1.32	3.0	4.0
Residential Unit 2a	1,841	1.09	1.0	1.1
Residential Unit 2b	1,997	1.18	2.0	2.4
Residential Unit 5	1,873	1.10	3.0	3.3
Residential Unit 6	1,584	0.93	3.0	2.8
Residential Unit 7	1,869	1.10	3.0	3.3
Residential Unit 8	1,674	0.99	3.0	3.0
Residential Unit 9	1,353	0.80	2.0	1.6
Residential Unit 10	1,222	0.72	6.0	4.3
Residential Unit 11	1,207	0.71	2.0	1.4
Residential Unit 12	1,239	0.73	2.0	1.5
Residential Unit 13	2,003	1.18	2.0	2.4
Residential Unit 14	1,533	0.90	2.0	1.8
Residential Unit 15	1,624	0.96	3.0	2.9
Residential Unit 16	1,363	0.80	3.0	2.4
Residential Unit 17	1,302	0.77	3.0	2.3
Residential Unit 18	1,413	0.83	3.0	2.5
Residential Unit 19	1,224	0.72	3.0	2.2
Residential Unit 20	1,560	0.92	2.0	1.8
Residential Unit 21	1,568	0.92	2.0	1.8
Residential Unit 22	1,588	0.94	3.0	2.8
Residential Unit 23	2,482	1.46	3.0	4.4
Residential Unit 24	1,614	0.95	3.0	2.9
Residential Unit 25	1,715	1.01	3.0	3.0
Residential Unit 26	2,066	1.22	3.0	3.7
Residential Unit 27	1,918	1.13	1.0	1.1
Residential Unit 28	2,258	1.33	2.0	2.7
Residential Unit 29	1,230	0.73	1.0	0.7
Residential Unit 30	1,338	0.79	1.0	0.8
Residential Unit 31	1,110	0.65	3.0	2.0
Residential Unit 32	1,110	0.65	3.0	2.0
Residential Unit 33	1,145	0.68	3.0	2.0
Residential Unit 34	1,072	0.63	3.0	1.9
Residential Total	133,317		85.0	78.6
Commercial Unit A (1st Floor)	36,273	21.39	1.0	21.4
Commercial Total	36,273		1.0	21.4
Project Total	169,590		86.0	100.0

Unit Numbers

Unit No.	Type	SQFT
201	1	2,246
202	27	1,918
203	2	1,841
204	26	2,066
205	31	1,110
206	25	1,715
207	32	1,110
208	24	1,614
209	33	1,145
211	34	1,072
213	5	1,873
214	8	1,674
215	6	1,584
216	7	1,869
217	9	1,353
218	23	2,482
219	10	1,222
220	22	1,588
221	11	1,207
222	21	1,568
223	10	1,222
225	10	1,222
227	12	1,239
229	13	2,003
231	14	1,533
232	20	1,560
233	15	1,624
234	19	1,224
235	16	1,563
236	18	1,413
237	17	1,302
301	1	2,246
302	28	2,258
303	2	1,997
304	26	2,066
305	31	1,110
306	25	1,715
307	32	1,110
308	24	1,614
309	33	1,145
311	34	1,072
313	5	1,873
314	8	1,674
315	6	1,584
316	7	1,869
317	9	1,353
318	23	2,482
319	10	1,222
320	22	1,588

Unit Numbers

321	11	1,207
322	21	1,568
323	10	1,222
325	10	1,222
327	12	1,239
329	13	2,003
331	14	1,533
332	20	1,560
333	15	1,624
334	19	1,224
335	16	1,363
336	18	1,413
337	17	1,302
401	1	2,246
402	28	2,258
403	2	1,997
404	26	2,066
405	31	1,110
406	25	1,715
407	32	1,110
408	24	1,614
409	33	1,145
411	34	1,072
413	5	1,873
414	8	1,674
415	6	1,584
416	7	1,869
418	23	2,482
420	22	1,588
422	29	1,230
424	30	1,338
425	15	1,624
426	19	1,224
427	16	1,363
428	18	1,413
429	17	1,302

The percentage interest of each Unit Owner in the Common Elements was determined by dividing the usable square feet in each Unit by the approximate total of 169,590 of usable square feet in all Units. Except with respect to (i) the costs of Elevator Maintenance, Elevator Phones, Lock & Security System, and Janitorial Service System, and Janitorial Service which is allocated exclusively to the Residential Units and (ii) the costs of the Management Fee (which is estimated to be \$850.00 for the Commercial Unit and \$20.00 per month for each Residential Unit), and Water & Sewer (which is estimated to be \$300.00 per month for the Commercial Unit and \$15.00 per month for each Residential unit), common expenses and costs shall be shared by Unit Owners in accordance with their respective percentages of ownership interest in the Common Elements.