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Prepared by & Return to: Jack Lyda , *WAYMON MORRIS*

**DECLARATION CREATING UNIT OWNERSHIP
AND ESTABLISHING RESTRICTIONS,
COVENANTS AND CONDITIONS FOR**

BOYLESTON BUSINESS PARK

Pursuant to North Carolina Law, Developer hereby gives notice that **THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.** (Herein below at Article III, section three)

ARTICLE I

1. Description of Units:

a) **Nature of Ownership:** Every condominium unit, together with undivided interest in the Common Areas and Facilities, shall for all purposes be, and it hereby is declared to be and to constitute, a separate parcel of real estate and the unit owner thereof shall be entitled to the exclusive ownership and possession of his condominium unit, subject only to applicable covenants, restrictions, and easements contained herein and all existing Bylaws, Rules, and Regulations, resolutions, and decisions adopted pursuant hereto and as may be contained in the accompanying By-Laws and the minutes of the Board of Directors of the Association. The percentage undivided interest in the Common Areas and Facilities of each unit shall not be separate from the unit to which it appertains, and shall be deemed to be conveyed or encumbered or released from liens with such unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. A unit owner shall automatically become a member of the Association, and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor in interest. By acceptance of a deed of a unit, the unit owner agrees to abide by this DECLARATION, any By-Laws, and all duly adopted rules and regulations of the Association and the Board.

b) **Unit Dimensions:** Each unit shall have the following interior dimensions: Approximately sixty (60) feet in length, forty (40) feet in width, and eighteen feet in height (eave height). Each unit shall include all the space within the boundaries thereof. Each unit is bounded both as to horizontal and

vertical boundaries by the structural framing, exterior wall and roof panels, wall & roof insulation and concrete slabs & foundations. The unexposed facing of interior wall covering (drywall, liner panel, insulation, etc.) and all finished flooring such as exposed wooden flooring, vinyl or linoleum floor covering, matting and carpeting, shall be deemed to be included as part of the unit purchased by each unit owner but will not include structural framing, exterior wall and roof panels, wall & roof insulation and concrete slabs & foundations. Each unit shall be deemed to include the interior and exterior of all doors, windows and other closures. Included as part of a unit are all door locks or other security or mechanical devices which control the opening and closing of doors and windows. Included also as a part of a unit are the following: (a) the heating and air conditioning systems serving the unit, wherever located; (b) the electrical wiring and service system, wherever located, from the service meter to the place where it connects with all uses within the unit; (c) the plumbing for water service from the point of entry into a unit; (d) the drainage or sewer plumbing from its collection point in a unit to its junction with the sewer line servicing other units; (d) any glass and/or plate glass in any window or door openings; (e) any exterior fixtures or accoutrements (awnings, signs, etc.). In interpreting this DECLARATION and its Plans, the actual physical boundaries of a unit as originally constructed, or of a unit reconstructed in substantial compliance with the original plan thereof, shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in this DECLARATION, or its Plan, regardless of settling or lateral movement of the building, and regardless of minor variances between boundaries shown on the Plans, and those of the Unit.

2. Common Area and Facilities:

a) **Description:** The general common areas and facilities consist of the entire property other than condominium units, including, without limitation:

1. The land on which the buildings are erected and all the land surrounding the buildings that lies within the boundaries of the land from time to time subject to this DECLARATION, and exterior walls, roofs, interior separation walls between Units (except the drywall, paneling, molding, and floor covering), ceilings, floors, etc. and every part of the buildings and property other than the condominium units.

2. The foundation and structural members, including columns, girders, beams and supports.

3. All installations designed and intended for common use or to serve more than one unit such as, but not limited to, electrical service, gas and plumbing, whether located in common areas or in condominium units, excluding from such installation all parts thereof, and all items affixed or connected thereof not designed or intended for common use or by more than one unit.

4. Easements for access, maintenance, repair, reconstruction, or replacement of the above-mentioned common areas and facilities and all other services necessary or convenient to the existence, maintenance, safety and use of the property.

5. The non-public roads and driveways, parking areas, walks, retaining walls, and all paved areas.

6. All maintenance areas.
 7. Any portion of the property shown and designated on the Plans as Common Area or Limited Common Area.
 8. Any structural member or load bearing wall may not be changed without the prior written consent of the Board of Directors.
 9. Each unit owner shall be responsible for a pro-rata share of the Common Area and facilities maintenance based upon his ownership interest (number of units owned) in the Condominium. Construction and maintenance shall be as deemed necessary by the Association with the exception that the parking and entrance area is to remain paved and accessible at all times and all common facilities shall be in working order at all times.
- b) **Percentage Interest:** The unit owners shall own the Common Areas and Facilities and the Limited Common Areas and Facilities as tenants in common, with each unit having appurtenant thereto a *Twenty per cent (20%)* interest in said Common Areas and Facilities described above herein. The percentage interest appurtenant to each unit has been determined as required by law and is based on estimated fair market value as of the date of this DECLARATION. Such determination shall not restrict the Declarant, or any subsequent owner, in establishing a sales price for any particular unit.
- c) **Inseparability of Percentage Interest:** The percentage interest in the Common Areas and Facilities and any Limited Common Areas and Facilities cannot be separated from the Unit to which it appertains and shall automatically be conveyed or encumbered with the unit, even though such interest is not expressly mentioned or described in the deed or other instrument.
3. **No Partition:** The Common Areas and Facilities and the Limited Common Areas and Facilities shall remain undivided and no right to partition the same or any part thereof shall exist except as provided in the Act, this DECLARATION, and the By-Laws. Nothing contained herein, however, shall be deemed to prevent ownership of a condominium unit by more than one person, either as tenants by the entireties, or as tenants in common, or in any other form by law permitted. Nothing contained herein, however, shall prevent the Board from creating additional Limited Common Areas and Facilities for a unit.
 4. **Use of Common Areas and Facilities:** Each unit owner shall have the right to use the Common Areas and Facilities in accordance with the purpose for which they are intended without hindering the exercise of or encroaching upon the rights of other unit owners. The Board shall, if any question arises, determine the purpose for which a part of the Common Areas and Facilities is intended for use. The Board shall have the right to promulgate rules and regulations limiting the use of Common Areas and Facilities to unit owners and their guests as well as provide for the exclusive use of a part of the Common Areas and Facilities by a unit owner and his invitees, which exclusive use may be conditioned upon, among other things, payment of a fee.

5. **Additional Limited Common Areas and Facilities:** The Board shall have the right to approve, from time to time, changes in existing Limited Common Areas and Facilities, to approve additional or new Limited Common Areas and Facilities for the exclusive use of the unit to which such Limited Common Areas and Facilities shall appertain; provide, that such additional Limited Common Areas and Facilities shall be immediately adjacent to the unit to which it shall appertain and shall extend no more than 15 feet from the unit to which it appertains.

ARTICLE II

RESTRICTIVE COVENANTS

1. **Construction and Sale:** Anything contained herein to the contrary notwithstanding, it shall be permissible for the Declarant to maintain during the period of construction and sale of units upon such portion of the property as Declarant may deem necessary, such facilities as in the sole discretion of the Declarant maybe reasonably required, convenient, or incidental to the construction and sale of units, including, but without limitation, a business office, storage area, construction yard, signs, model units, and sales offices.

2. **Alterations and Attachments by Unit Owner:** Unit owners shall be allowed to make alterations or modifications to the interior of their unit with the exception of alterations or modifications that impact the building structure. Unit owners shall make no connections or attachments to the building structural steel (except mounting of typical interior commercial lighting fixtures) without the written approval of the Board of Directors. No alterations or modifications to any of the common areas & facilities shall be made without the written approval of the Board of Directors. Unit owners shall not alter or modify any exterior window or door or add any exterior window or door without the written approval of the Board of Directors. The Board of Directors shall not approve of any alterations, decorations or modifications which would jeopardize or impair the soundness, safety or overall appearance of the Condominium Property.

3. **Signs:** Unit owners shall be permitted to display signage relating to the commercial purpose of the particular unit on a community sign to be erected on the property as well as on the glass window portions of each respective unit. No signs or other advertising devises shall be displayed which are visible from the exterior of any unit or on the Common Areas and Facilities, including "For Sale" signs, without prior approval and written permission from the Board, which permission shall not be unreasonably withheld. This section shall not be construed in any way so as to regulate or prohibit the display of the flag of the United States or North Carolina pursuant to N.C.G.S. 47F-3-121. However, pursuant to North Carolina General Statute Section 47F-3-121, **THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.**

4. **Prohibitions in Use of Common Areas and Facilities:** Except where indicated on exhibits attached hereto or on specific approval of the Board, the Common Areas and Facilities, including Limited Common Areas, shall not be used for temporary or permanent storage of supplies, personal property, trash, or refuse of any kind, except in common trash receptacles placed at the discretion of the Board, nor shall they be used in any way for the drying or airing of clothes, rugs or other fabrics. Entrances, sidewalks, yards, driveways, parking areas and stairways shall not be obstructed in any way. In general, no activities shall be carried out on nor condition maintained by any unit owner either in his

unit or upon the Common Areas and Facilities, if such activities should despoil, or tend to despoil, the appearance of the Condominium Property. It is expressly acknowledged and agreed by all parties concerned that this section is for the mutual benefit of all owners on the condominium property and is necessary for the protection of the unit owners and is enforceable by the Board or any one or more unit owners.

5. **Access to Units:** The Association or its agent shall have access to each unit from time to time during reasonable working hours, upon oral or written notice to its owner, as may be necessary for the maintenance, repair, or replacement of any of the Common Areas and Facilities.

6. **Subdividing:** No unit may be divided or subdivided into smaller units, nor any portion thereof sold or otherwise transferred, without first amending the DECLARATION to show the changes in the units to be affected thereby; provided that any amendment to this DECLARATION providing for the Premises into smaller units must be approved by all unit owners.

7. **Nuisances:** No nuisances shall be allowed upon the Condominium/Warehouse Property and no person shall engage in any use, practice, or activity upon such property which is noxious, offensive, or a source of annoyance to unit owners or which reasonably interferes with peaceful possession and proper use of property by any unit owner. All parts of the property shall be kept in a clean and sanitary condition; and no rubbish, refuse, or garbage shall be allowed to accumulate and no fire hazard shall be allowed to exist. Any unit owner (or his tenants or licensees) who shall dump or place any trash or debris upon any portion of the property shall be liable to the Association for the actual cost of removal thereof and the same shall be added to and become a part of the assessment next coming due to which the unit owner is subject. No unit owner shall permit any use of his unit or make any use of the Common Areas and Facilities which will increase the rate of insurance upon the Condominium Property.

8. **Exterior Antennae:** There shall be no exterior antenna for television, radio, citizen band, ham radio, not any other exterior fixture or appliance for electronic devices or for transmission or receipt of communication signals without prior approval of the Board.

9. **Lawful Use:** No immoral, improper, or unlawful use shall be made of the Condominium Property nor any part thereof. All valid laws, zoning ordinances, and regulations of governmental bodies having jurisdiction thereof shall be observed.

10. **Restriction on Transfer of Common Areas:** The Association shall not seek to abandon, partition, subdivide, encumber, sell or transfer any portion of the Common Areas and Facilities, without the written approval of all unit owners having a right to Common Areas and Facilities. The granting of easements for public utilities or other public purposes consistent with the intended use of the Common Areas and Facilities shall not be deemed a transfer within the meaning of this paragraph.

11. **Commercial Use:** The Units herein shall, under no circumstances, be used for residential purposes. Each unit owner is otherwise free to utilize his respective unit in any manner not inconsistent with other express terms herein.

12. **Maintenance and Repair:** There shall be an easement through the units and the Common Areas and Facilities for the installation, maintenance, repair and replacement of Common Areas and Facilities described herein. Use of this easement shall only be during normal business hours or as otherwise agreed upon between the unit owner and the Association. Each Unit Owner shall be responsible for the maintenance and repair of the non-common areas specific to his Unit.

13. **Structural Support:** Every portion of a unit or the Common Area and Facilities which contributes to the structural support of another unit shall be burdened with an easement of structural support.

ARTICLE III

Membership and Voting Rights

1. Every Owner of a Unit which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Unit which is subject to assessment.

2. The Association shall have 5 voting members, (the Board) made up of five representatives designated by each Unit owner to serve during the period of ownership indefinitely until such time as Unit ownership changes or Unit owner designates, in writing, a different representative. Each representative shall be entitled to one (1) vote on behalf of his Unit owner. When more than one person holds an interest in any Unit, all such persons shall be members; the vote for such Unit shall be exercised as the Owners among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Unit. If multiple Owners owning any Unit are unable to agree on their choice of representative, their vote shall not be counted.

ARTICLE IV

Assessments

1. **Creation of the Lien and Personal Obligation of Assessments:** The Developer, for each Unit owned; hereby covenants, and every other Owner of any Unit subject to this Declaration, by acceptance of a deed therefore, whether or not expressed in any such deed of other covenant, is deemed to covenant and agrees to pay the Association: The Developer will not be liable for any assessments once Developer no longer retains any ownership interest in any unit in Boyleston Business park.

a) Annual assessments or charges, as determined by the Board;

b) Special assessments for capital improvements, or unanticipated crises or contingencies, such assessments to be fixed, established, and collected from time to time as hereinafter provided:

The annual and special assessments on a Unit together with interest thereon and costs of collection thereof, as hereinafter provided, shall be a charge on the Unit and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest and costs, and reasonable attorney's fees (as provided in the Act) incurred by the Association in collecting delinquent assessments shall also be the personal obligations of the person or entity who was the Owner of such Unit at the time when the assessment became due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors or assigns in title unless expressly assumed by them, notwithstanding that the lien for delinquent assessments shall continue to encumber the Unit. In addition, the Association shall have all those powers provided for in the Act, as it may be amended from time to time, including the ability to impose fines.

2. **Purpose of Assessments:** The Assessments levied by the Association may be used for the following purposes:

- a) for the payment of ad valorem taxes and public assessments levied on the Common Elements or Limited Common Elements, if any;
- b) for the maintenance and operation of any utility systems owned by the Association
- c) for the maintenance of common areas/elements or limited common areas, if applicable, including but not limited to private streets, roads, walkways, fences, and structural walls, as well as all signs and lighting located thereon and adjacent thereto;
- d) for the exterior maintenance of all improvements on each Unit within the Property, including painting, repairing, replacement and care of roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks and the exterior improvements. Such exterior maintenance shall not include glass surfaces or locks. In the event that the need for maintenance or repair of a Unit or improvements thereon is caused by the willful or negligent acts of the Owner of any Unit or through the willful or negligent act of any invitees of the Owner of any Unit needing such maintenance or repair, the cost of such exterior maintenance shall be added and become part of the assessment to which such Unit is subject. The Association, in its sole discretion, determines what maintenance is required;
- e) for landscape and yard work maintenance on the premises;
- f) for snow removal from parking and road access areas;
- g) for maintenance of the entrance area; provided, that it is understood that if a gate is constructed, such gate shall not be construed as any representation or guaranty of security to Unit Owners;
- h) for the procurement and maintenance of liability and hazard insurance in accordance with any By-Laws promulgated herein and the regulations of the Federal National Mortgage Association, such liability insurance to insure the Association in a minimum amount of \$1,000,000.00 per occurrence, or any other appropriate insurance that the Association requires;

- i) for garbage removal;
- j) for the employment of professionals, such as accountants, attorneys, and management firms, to represent the Association when necessary;
- k) to maintain a reasonable reserve for the foregoing or other purposes determined to be necessary by the Association;

3. **Special Assessments for Capital Improvements:** In addition to the annual assessments authorized herein, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, 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 three-fifths (3/5) of the vote of the Board who are voting in person or by proxy at a meeting duly called for this purpose. Written notice of any meeting called for the purpose of taking any action authorized under this section shall be sent to all members not less than thirty (30) days and no more than sixty (60) days in advance of the meeting.

4. **Annual Assessments:** Annual assessments may be required and shall be fixed by the Board of Directors of the Association. At least thirty (30) days in advance of each annual assessment, the Board of Directors of the Association shall fix the amount of the annual assessment against each Unit and send written notice of such assessment to every Owner representative subject thereto. The due dates of such assessments shall be established by the Board of Directors and such assessments shall be payable on the due date, but may be collected in monthly, quarterly, or annual assessments, as established by the Board. A delinquent account may be accelerated by the Association such that the entire year's assessment becomes immediately due. Assessments shall begin as to any Unit Owner at purchase of the Unit from Developer the month following closing. The Association shall, upon demand, and for a reasonable charge, furnish a certificate or other writing stating forth whether the assessment for a specified Unit has been paid. Assessments, as to subsequent purchasers, shall begin as a liability to such purchasers effective upon the first day of the month following closing.

5. **Uniform Rate of Assessments:** Both annual and special assessments must be fixed at a uniform rate for all Units.

6. **Remedies for Non-Payment of Assessments:** Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days of its due date, the Board may impose a late fee of the greater of:

(i) twenty dollars (\$20.00) per month; or (ii) ten percent (10%) of any assessment installment unpaid. The Association may bring an action in law against the Owner personally obligated to pay the assessment and interest or foreclose the lien created therein in the same manner as described by the laws of the State of North Carolina for foreclosure of deeds of trust. Costs and reasonable attorney fees as provided for above for any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Elements, or abandonment of his dwelling unit or

Unit. In the event that an action at law results in a judgment being entered against the Owner of any Unit and in favor of the Association, the Association shall be further empowered to obtain execution on such judgment in a manner to the extent provided for and permitted by the laws of the State of North Carolina. The Association may delegate collection of delinquent assessments to a duly-appointed property manager.

7. **Assessment of Fines for Non-Compliance:** In the event that any Owner shall fail to comply with the terms of the Declaration, any Bylaws, Rules or other restrictions hereunder, the Association Board may notice such non-complying Owner(s) of a hearing before the Board, in accordance with N.C.G.S. 47F-3-107.1, and shall be given notice of the charge, opportunity to be heard and to present evidence, and notice of the decision. If it is decided that a fine should be imposed, a fine not to exceed one hundred (\$100.00) may be imposed for the violation and without further hearing, for each day after the decision that the violation occurs. Such fines shall be assessments secured by liens under G.S. 47F-3-103.

8. **Annual Budget:** By majority vote of the Directors, the Board shall adopt an annual budget for the each year of operation which shall- provide for the allocation of expenses in such a manner that the obligations imposed by this declaration and any and all amendments hereto shall be met.

9. **Omission of Assessments:** The omission by the Board, before the - expiration of any year, to fix the assessments hereunder for that or for the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligations to pay any assessments.

10. **Subordination of Lien to Mortgages:** The lien of the assessments provided for herein shall be subordinate to any mortgage or deed of trust which is a first lien on a Unit within the Premises. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to mortgage 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. Nothing herein shall prevent, and any mortgagee may, at its option, pay any delinquent obligations of a property Owner. Developer or Association shall notify by certified mail return receipt requested, any mortgagees of any delinquency or any default in the presence of any obligations of an Owner prior to taking any action against such Owner which would affect the mortgagee.

ARTICLE V

Insurance

The Property Owners Association Shall maintain an "umbrella insurance policy" which will provide coverage for structures not contained within the boundaries described in Article 1, paragraph 1(b) of these declarations and restrictive covenants. All Owners of Units are required to have fire and extended coverage insurance in an amount sufficient to cover the full replacement cost of everything included within the boundaries described in Article 1, paragraph

1(b) of these declarations and restrictive covenants. All Owners of Units shall have an affirmative obligation to provide the Association with a copy of the declaration page of their current fire and extended coverage insurance policy at or prior to Closing. In the event of damage to or destruction of any Unit which would be covered by a standard fire and extended coverage insurance policy, the Owner of such dwelling unit shall have the affirmative responsibility of reconstructing or repairing it regardless of whether such Owner has such a standard fire and extended coverage insurance policy. In the event of the Owner's failure to repair or reconstruct such dwelling unit, the Association may, at its discretion, clean up the debris or repair the damage and add the costs thereof to the assessment against the Unit upon which said dwelling unit is located, and collect such assessments pursuant to the provisions herein or in the By-Laws. If a unit is leased, the Tenants therein are required to have fire and extended coverage insurance in an amount sufficient to cover the full replacement cost of everything included therein.

ARTICLE VI

Easements

1. **Easements Established:** All Units and Common Elements within the Premises shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas, telephone, cable television and electric power lines and ingress and egress and for other purposes as shall be established by the Association.
2. **Road Rights-of-Way:** All Units within the Premises property are serviced by certain road rights-of-way described on plats to be recorded. Developer does hereby dedicate said rights of way as shown as public roadways, and is constructing such road rights of way in accordance with current Department of Transportation specifications. As such, and pursuant to N.C.G.S. Section 136-102.6, all future Unit Owners acknowledge that the rights of way as shown on the Plat are public road rights-of-way dedicated to public use and will be developed in accordance with the minimum right-of-way and construction standards established by the North Carolina Department of Transportation for acceptance on the State highway system. As such, all future Unit Owners, and their heirs, successors and assigns, covenant and agree that they shall be jointly responsible for the maintenance, upkeep, repair and service of such road rights of way until such time as the Department of Transportation assumes the obligation for the maintenance of said road rights of way.
3. **Encroachments and Developer's Easements to Correct Drainage:** All Units and the Common Elements shall be subject to easements for the encroachment of initial improvements constructed on adjacent Units by the Developer to the extent that such initial improvements actually encroach, including, without limitation, such items as overhanging eaves, gutters, downspouts, exterior storage rooms, steps and walls. If an encroachment is created as a result of settling or shifting of any building or as a result of any permissible repair, construction, reconstruction, or alteration, there is hereby created and shall be and remain a valid easement for such encroachment for the maintenance of the same. For a period of twenty-five (25) years from the date of conveyance of the first Unit in a phase, the Developer reserves a blanket easement on, over and under the ground within that phase to maintain and to correct drainage or surface water in order to maintain reasonable standards of health, safety, and appearance, expressly including

the right to cut any trees, bushes or shrubbery, make any grading of the soil, or take any other similar action reasonably necessary. After such action has been completed, the Developer shall restore the affected property to its original condition to the extent practicable. Developer shall give reasonable notice of intent to take such action to all affected Owners. These rights and reservations are assignable by the Developer. Nothing in this section shall be deemed to impose an obligation upon Developer to maintain and correct drainage and surface water conditions.

4. **Easements to Henderson County and Public or Private Utilities:** A perpetual easement is hereby established for county, state or public or private utilities serving the area, their agents and employees over all Common Elements hereby or hereafter established for postal and private mail delivery, garbage collection, setting, removing and reading utility meters, maintaining and replacing utility or drainage connections, or cable service, and acting with other purposes consistent with the public safety and welfare, including, without limitation, police and fire protection.

5. **Easement for Construction Purposes:** Developer or Association shall have full rights of ingress and egress to and through, over and about the Common Elements in the Premises during such period of time as Developer or Association is engaged in any construction or improvement work on or within the Premises. Developer or Association shall further have an easement for the purpose of the storage of materials, vehicles, tools, equipment, etc. which are being utilized. No Owner, his guests or invitees shall in any way interfere or hamper such construction, it being understood and agreed that the construction activities described above, so far as practical, not interfere with the quiet enjoyment of Units within the Premises.

ARTICLE VII

Common Walls

1. **General Rules of Law to Apply:** Each wall which is built as a part of the original construction of the Units upon the Property and placed on the dividing line between the Units shall constitute a Common 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 therein.

2. **Sharing of Repair and Maintenance:** The cost of reasonable repair and maintenance of a common wall shall be shared equally by the Owners of dwelling units adjoining such common wall.

3. **Destruction by Fire or Other Casualty:** If a common wall is destroyed or damaged by fire or other casualty, any Owner who shares the wall may restore it, and all Owners with use of the wall shall equally contribute to the cost of restoration thereof without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

4. **Right to Contribution Runs with the Land:** The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the Unit and shall pass to such Owner's successors in title.

5. **Arbitration:** In the event of any dispute arising concerning a common wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose an additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE VIII

Obligations to Mortgagees

The following provisions are established for the benefit of the holders of mortgages (the definition of mortgages to include Deeds of Trust or other security instruments) encumbering any Units located within the Premises:

- a) Developer or Association shall be obligated to notify the holder of any first mortgage or deed of trust on a Unit, upon request of such holder, of any default by the Unit Owner and the performance of any of such Owner's obligations described herein, including failure to pay assessments when due, which is not cured within sixty days from the date of such default;
- b) First mortgagees of Units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any of the Common Elements and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy for such Common Elements;
- c) No provision herein shall be construed to give a Unit Owner or any other party priority over any rights of first mortgagees of Units governed hereby pursuant to their mortgages in the case of a distribution to Unit Owners of insurance proceeds or condemnation awards for losses to or a taking of, Common Elements property.

ARTICLE IX

The Property Owners' Association

The Developer does hereby establish a non-profit entity which shall be known as BOYLESTON BUSINESS PARK, INC. (herein "Association"). The purpose of the Association shall be to provide for the orderly enforcement of these covenants, including, but not limited to, the maintenance, upkeep and repair of the joint rights of way within the Premises and any Common Elements or any other matter or area determined by the Association to be a Common Element or other area of common interest. The Board of Directors as established in the Bylaws of the Association shall constitute the Executive Board as defined in N.C.G.S. 47E3-103 and shall be subject to the provisions of such statute, except as set forth in this Declaration or the terms of the Bylaws of the Association.

ARTICLE X

General Matters

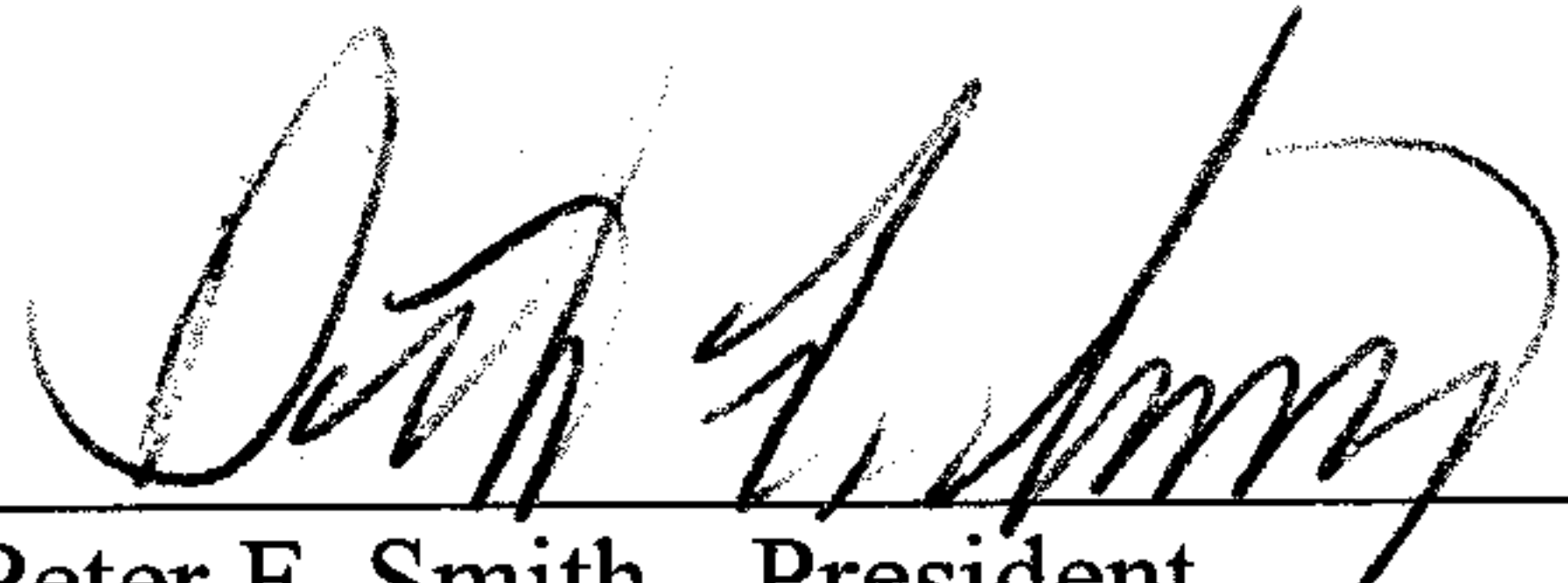
1. **Adjoining Properties and Governmental Actions:** All purchasers of Units do hereby acknowledge that Developer has made no representations as to uses of adjoining properties and such purchasers have been advised to investigate on their own accord any particular uses of adjoining properties and acknowledge that they have assumed such responsibility. By acceptance of a deed conveying title to any Unit within the Premises, such purchasers do hereby understand and agree that Developer is not responsible for any activities or actions conducted on any property adjoining the Premises, or in any way relating to or arising out of any use of any property adjoining the Premises. The purchaser of any Unit acknowledges that they have investigated on their own accord how such uses may affect the Premises and are satisfied that they do not materially or substantially affect the value, use or enjoyment of any Unit.

2. **Enforcement:** Enforcement of these covenants and restrictions shall be by any proceeding at law or equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain or enjoin violations, or to recover damages, or in addition to the lien enforcement rights set out in Article 2 of Chapter 44A of the North Carolina General Statutes, by any appropriate proceeding at law or equity against the land to enforce any lien created by these covenants. Action for enforcement may be brought by the Association or any Unit Owner. In addition, the Association may impose reasonable fines pursuant to the Act against any property Owner for violation of these Restrictions. The remedies granted and reserved herein are distinct, cumulative remedies and the exercise of any of them shall not be deemed to exclude the rights of other property Owners to exercise any or all of the other remedies or those which may be permitted by law or equity. The failure to enforce any rights, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bear on or affect its enforcement. Any person entitled to file a legal action for violation of the covenants shall be entitled as part of any judgment in favor of the filing party to recover a reasonable attorney's fee as a part of such action.

3. **Amendment and Modification.** The Developer does hereby declare the advantages accruing to the Property from these covenants and restrictions hereinabove set forth. All covenants, restrictions and affirmative obligations set forth herein shall run with the Property and shall be binding on all parties and persons claiming under them. Except as otherwise set forth in these Restrictions, Any amendments to these Restrictions shall be made and approved in the manner whereby at an annual meeting or specially called meeting of the Members, sixty-seven percent (67%) of the Members vote in favor of such amendment and once made, shall become effective when recorded in the Henderson County, North Carolina, Register's Office. For the purpose of any such vote of the Members, each Member shall vote as set forth herein. Whenever herein the Developer has reserved a right or the discretion to decide a matter, then the exercise of such right and the decision of such matter shall be in the sole and absolute discretion of the Developer. Nothing herein shall require or shall be construed so as to require the Developer or its related persons or entities to subject all or any part of its remaining adjoining property to these Restrictions.

IN WITNESS HEREOF, the Developer has hereunto set its hand d seal the day and year above first written.

S&D Development Group, Inc.

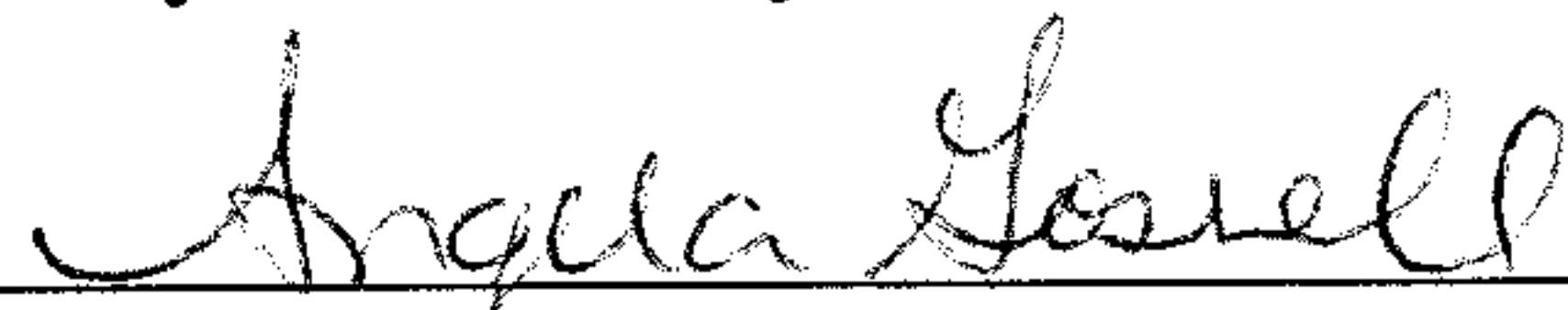
BY: 
Peter F. Smith - President

BY: 
John R. Dean - Secretary

State of North Carolina
County of Henderson

I, Angela Gosnell, Notary Public for Henderson County, North Carolina, certify that Peter F. Smith, personally came before me this day and acknowledged that he is President of S & D Development Group, Inc., a North Carolina corporation and that he as President, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 1st day of February, 2008.


Notary Public

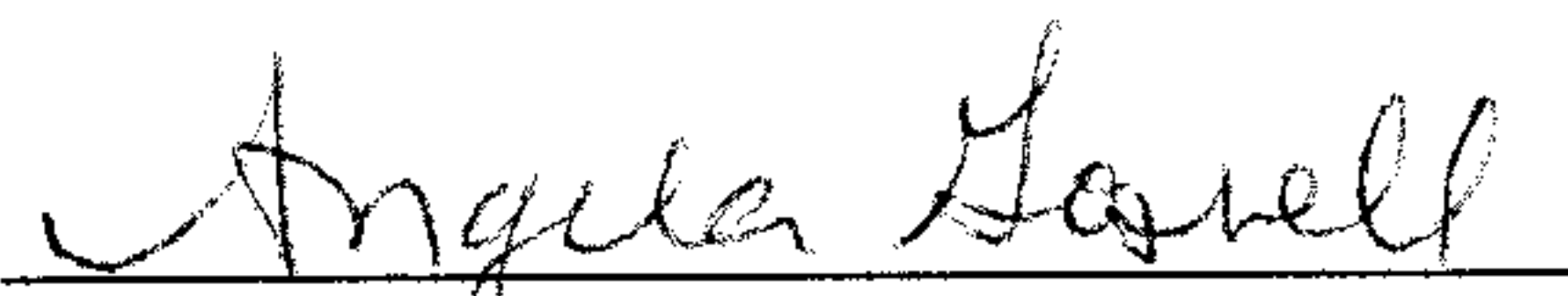
My Commission Expires: 02-19-12

ANGELA GOSNELL
NOTARY PUBLIC
HENDERSON COUNTY, NC
MY COMMISSION EXP. 02/19

State of North Carolina
County of Henderson

I, Angela Gosnell, Notary Public for Henderson County, North Carolina, certify that John R. Dean, personally came before me this day and acknowledged that he is Secretary of S & D Development Group, Inc., a North Carolina corporation and that he as Secretary, being authorized to do so, executed the foregoing on behalf of the corporation.

Witness my hand and official seal, this the 1st day of February, 2008.


Notary Public

My Commission Expires: 02-19-12

ANGELA GOSNELL
NOTARY PUBLIC
HENDERSON COUNTY, NC
MY COMMISSION EXP. 02/19