

# Lofts Declarations

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## THE DECLARATION OF THE COLONY LOFTS CONDOMINIUM

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Consisting of 25 Pages with Attached Exhibits A, B, C, D, E and F

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## DECLARATION OF THE COLONY LOFTS CONDOMINIUM

THIS DECLARATION, made this 25th day of November, 2002, by GATEWAY HOMES IV, LLC, a North Carolina limited liability company, ("Developer"), pursuant to the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes ("Act").

### WITNESSETH

WHEREAS, Developer is the owner in fee simple of certain real estate situated in the City of Charlotte, County of Mecklenburg, and State of North Carolina, more particularly described on Exhibit A attached hereto and made a part hereof, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate; and

WHEREAS, Developer desires to submit a portion of said property to Act.

NOW, THEREFORE, Developer, as the owner of said property, hereby declares as follows:

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## **ARTICLE I: Definitions**

**Definitions.** As used herein, the following words and terms shall have the following meanings:

### **1.1 Act**

The North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes.

### **1.2 Association**

The Colony Lofts Condominium Homeowners Association, Inc., a nonprofit corporation organized under Section 47C-3-101, North Carolina General Statutes.

### **1.3 Board**

The Executive Board of the Association.

### **1.4 Bylaws**

The Bylaws of the Association which are hereby incorporated herein and made a part hereof by this reference, and attached as Exhibit B.

### **1.5 Common Elements**

All portions of the Condominium except the Units. Limited Common Elements are Common Elements.

### **1.6 Common Expenses**

Expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves.

### **1.7 Condominium**

The condominium created by this Declaration.

### **1.8 Declarant**

Developer and (i) any other person who has executed this Declaration, or who hereafter executes an amendment to this Declaration except First Mortgagees and except persons whose interest in the Property will not be conveyed to Unit Owners, and (ii) any person who succeeds to any Special Declarant Rights as defined in Section 47C-1-103(23) of the Act.

### **1.9 Declarant Control Period**

The period commencing on the date hereof and continuing until earlier of (i) the date two (2) years after all Declarants have ceased to offer Units for sale in the ordinary course of business, or (ii) the date upon which Declarant surrenders control of the Condominium, or (iii) the date one hundred twenty (120) days after the Declarant has conveyed seventy-five percent (75%) of the Units to Unit Owners other than a Declarant, or (iv) the date two (2) years after any development right to add new Units was last exercised by Declarant.

### **1.10 First Mortgage and First Mortgagee**

A First Mortgage is a mortgage or deed of trust which has been recorded so as to give constructive notice thereof, and which is a first lien on the Units described therein. A first Mortgagee is the holder, from time to time, of a First Mortgage as shown by the records of the Office of the Register of Deeds for the county in which the First Mortgage is recorded, including the Federal National Mortgage Association and a purchaser at foreclosure sale upon foreclosure of a First Mortgage until expiration of the mortgagor's period of redemption.

If there be more than one holder of a First Mortgage, they shall be considered as, and act as, one First Mortgagee for all purposes under this Declaration and Bylaws.

#### **1.11 Limited Common Elements**

Those portions of the Common Elements allocated by this Declaration, the Plans or by operation of Section 47C-2-102(2) or (4) of the Act for the exclusive use of one or more but fewer than all of the Units.

#### **1.12 Master Declaration**

That Master Declaration of Covenants, Conditions and Restrictions for The Colony executed by Declarant and recorded in the Mecklenburg County Public Registry.

#### **1.13 Occupant**

Any person or persons in possession of a Unit, including Unit Owners, the family members, lessees, guests and invitees of such person or persons, and family members, guests and invitees of such lessees.

#### **1.14 Person**

A natural person, corporation, partnership, trust or other legal or commercial entity, or any combination thereof.

#### **1.15 Plans**

The plans of the Condominium recorded with, and by the Act made a part of, this Declaration, as the same may hereafter be amended, and described on Exhibit C.

#### **1.16 Plat**

The survey plat depicting the Condominium and the location of buildings on the Property recorded with, and by the Act made a part of, this Declaration, as the same may hereafter be amended, and described on Exhibit D.

#### **1.17 Property**

The Property rights described on Exhibit A-1, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said property which is a portion of the property described in Exhibit A.

#### **1.18 Retail Association**

Shops at the Colony Owners Association, Inc. A North Carolina non-profit corporation, created to govern the Retail Condominium.

#### **1.19 Retail Condominium**

That condominium created by that Declaration of Shops at the Colony Condominium recorded in the Mecklenburg County Public Registry and constructed upon that property described on Exhibit A.

#### **1.20 Rules and Regulations**

The rules and regulations of the Condominium promulgated by the Executive Board from time to time.

### **1.21 Special Declarant Rights**

The rights as defined in Section 47C-1-103(23) of the Act of the benefit of a Declarant, including, but not limited to, the following: to complete the improvements indicated on the Plans; to maintain sales offices, models and signs advertising the Condominium on the Property; to exercise any development right as defined in Section 47C-2-110 of the Act; to use easements over the Common Elements for purpose of making improvements within the Condominium; to elect, appoint or remove members of the Board during the Declarant Control Period; to make the Condominium part of a larger condominium.

### **1.22 Unit**

A portion of the Condominium, whether or not contained solely or partially within a building, together with its percentage of undivided interest in the Common Elements as set forth on Exhibit E. Each Unit is designated and delineated on the Plans.

### **1.23 Unit Boundaries**

The boundaries of each Unit, both as to vertical and horizontal planes, as shown on the Plans, are the undecorated surfaces of the perimeter walls, exterior doors and exterior windows facing the interior of the Unit, the undecorated surfaces of the ceiling facing the interior of the Unit, and the topmost surfaces of the subflooring, and include the decoration on all such interior and topmost surfaces, including, without limitation, all panelling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the decorates surfaces thereof, and als includes all spaces, interior partitions and other fixtures and improvements within such boundaries. Also included as part of the Unit shall be those portions of the heating and air conditioning system for the Unit which are located within the perimeter walls of the Unit and those portions of the heating and air conditioning system located in the Common Elements, wherever located.

### **1.24 Unit Owner**

The person or persons, including the Declarant, owning a Unit in fee simple.

## **ARTICLE II: Submission of Property to the Act**

### **2.1 Submission**

Developer hereby submits the Property to the Act.

### **2.2 Name**

The Property shall hereafter be known as The Colony Lofts Condominium

### **2.3 Division of Property into Separately Owned Units**

Developer, pursuant to the Act, and to establish a plan of condominium ownership for the Condominium, does hereby divide the Property into nine (9) Units and does hereby designate all such Units for separate ownership, subject however, to the provisions of Section 2.4 hereof.

### **2.4 Alterations of Units**

Subject to the provisions of the Bylaws, a Unit may be altered pursuant to the provisions of Sections 47C-2-111, 47C-2-112 and 47C-2-113 of the Act.

### **2.5 Limited Common Elements**

The Limited Common Elements serving or designed to serve each Unit are hereby allocated solely and exclusively to each such Unit.

## **2.6 Unit Allocations**

The allocation to each Unit of a percentage of undivided interest in the Common Elements and of a percentage of the Common Expenses, is as stated on Exhibit E. There shall be an equal allocation of undivided interests in the Common Elements and the Common Expenses to each Unit. The votes in the Association are equally allocated to all Units with each Unit Owner having one (1) vote for each Unit owned.

## **2.7 Encumbrances**

The liens, defects and encumbrances affecting the Property to which the rights of Unit Owners and Occupants are hereby made subject are set out on Exhibit F.

## **2.8 Condominium Ordinances**

The Condominium is not subject to any code, real estate use law, ordinance, charter provision, or regulations (i) prohibiting the condominium form of ownership, or (ii) imposing conditions or requirements upon condominium which are not imposed upon physically similar developments under a different form of ownership. This statement is made pursuant to Section 47C-1-106 of the Act for the purpose of providing marketable title to the Units in the Condominium.

## **2.9 Reservation of Special Declarant Rights**

Declarant hereby reserves all Special Declarant Rights.

# **ARTICLE III: Easements**

## **3.1 Encroachments**

In the event that, by reason of the construction, reconstruction, rehabilitation, alteration, or improvement of the buildings or improvements comprising a part of the Property, any part of the Common Elements now or hereafter encroaches upon any part of any Unit, or any part of Common Elements, or upon any part of another Unit, an easement for the continued existence and maintenance of each such encroachment.

## **3.2 Master Declaration**

The Property shall be subject to the rights and obligations contained in the Master Declaration.

## **3.3 Retail Condominium Easements**

The Declarant shall grant easements to the Retail Condominium Association as provided in that Declaration of Shops at the Colony Condominium recorded in the Mecklenburg County Public Registry. Declarant will further grant, bargain, sell and convey to the Retail Condominium Association the following easements, each for the benefit of and appurtenant to the rights of the Retail Condominium Association:

1. Easements to use, maintain, repair and replace at the Retail Condominium Associations's expense, the sidewalks, entryways, and support structures (to the extent the same or any of them are located upon the Lofts Condominium property) serving or for structural support of the Retail Condominium improvements and at the Retail Condominium Association's expense, to augment, enlarge and supplement the same or any of them to the extent reasonably required to provide necessary support to the Retail Condominium improvements; provided, however, that the Retail Condominium Association shall repair any damage to the Lofts Condominium improvements.
2. Easements to attach, at the Retail Condominium Association's expense, the support structures and shafts for the Retail Condominium improvements.
3. Easements to extend and use, maintain, repair and replace at the Retail Condominium Association's expense, those support structures within the garages and entryways of the Lofts Condominium improvements as may be required in order to also serve the Retail Condominium improvements.

4. Easements to install, maintain, relocate, repair and replace, at the Retail Condominium Associations's expense, utility facilities including but not limited to conduits, pipes, mains, lines and wires for heating, cooling, water, electricity, gas, cable, telephone, storm and sanitary sewers and other utilities in the garages or entryways or upon the roofs located within the Lofts Condominium improvements as reasonably required to provide utility services to the Retail Condominium improvements, including the right to penetrate floors, walls and other structural improvements of the Lofts Condominium improvements. Notwithstanding the foregoing, if the Retail Condominium Association desires to exercise its rights to use the easements granted hereby, the Retail Condominium Associations at its expense, shall (a) repair any damage to the improvements located thereon in the Lofts Condominium resulting from such exercise and (b) in the event of relocation or abandonment of the conduits, mains, lines and wires installed as a result of such exercise, remove any old or abandoned conduits, pipes, mains, lines and wires and restore the improvements located thereon in the Lofts Condominium, substantially to their condition prior to such exercise.
5. Easements to permit the encroachment of eaves, balconies, bay windows or other architectural projections or extensions from the Retail Condominium improvements, including the right to construct, repair, maintain and replace such projections or extensions over, across and through the air rights of the Lofts Condominium.

### **3.4 Easements Through Walls**

Easements are hereby declared and granted to the Association and to such persons as are authorized by the Association, to install, lay, maintain, repair and replace any chutes, flues, ducts, vents, pipes, wires, conduits and other utility installations, and structural components running through the walls of the Units, whether or not such walls lie in whole or in part within the boundaries of any Unit.

### **3.5 Easements To Repair, Maintain, Restore and Reconstruct**

Wherever in, and whenever by, this Declaration, the Bylaws or the Act, a Unit Owner, the Association, the Board, or any other person, is authorized to enter upon a Unit or the Common Elements to inspect, repair, maintain, restore or reconstruct all or any part of a Unit or the Common Elements, such easements as are necessary for such entry and such repair, maintenance, restoration or reconstruction are hereby declared and granted.

### **3.6 Easements for Utilities**

The Units and Common Elements shall be, and are hereby, made subject to easements in favor of the Declarant (until Declarant shall have satisfied all of its obligations under the Declaration and Bylaws and all commitments in favor of any Unit Owner and the Association), the Association, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements provided for by this Section 3.6 shall include, without limitation, rights of Declarant, the Association, any providing utility, any service company, and any governmental agency or authority and any of them to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television equipment and facilities (cable or otherwise), electrical wires, conduits and equipment and ducts and vents and any other appropriate equipment and facilities over, under, through, along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section 3.6, unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant to a grantee other than the Declarant, or so as not to materially interfere with the use or occupancy of the Unit by its Occupants.

### **3.7 Declarant's Easement**

Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, exercising Special Declarant Rights, and completing the



development and construction of the Condominium, which easements shall exist as long as reasonably necessary for such purpose.

### **3.8 Easement for Storm Water Retention**

The Common Elements shall be and are hereby made subject to the easements in favor of the Declarant, its successors and assigns, for the installation, maintenance, repair, relocations, replacement and use of storm water lines, pipes, conduits, mains and retention pond facilities and other appropriate equipment and facilities related to storm water drainage. The easements provided for in the Section 3.6 shall be for the benefit of the Property and other nearby property owned at any time hereafter by Declarant.

### **3.9 Easements To Run With Land**

All easements and rights described in this Article III are appurtenant easements running with the land, and except as otherwise expressly provided in this Article III shall be non-exclusive and perpetually in force and effect, and shall inure to the benefit of and be binding upon Declarant, the Association, Unit owners, Occupants, First Mortgagees and any other person having any interest in the Condominium or any part thereof. The Condominium and every part thereof shall be conveyed and encumbered subject to and together with all easements and rights described in this Article III, whether or not specifically mentioned in any such conveyance or encumbrance.

## **ARTICLE IV: Restrictions, Conditions and Covenants**

### **4.1 Compliance with Declaration, Bylaws and Rules and Regulations**

Each Unit Owner and Occupant shall comply with all applicable provisions of the Act, this Declaration, the Bylaws, the Articles of Incorporation of the Association, and rules and regulations promulgated by the Board or the Association, as amended. Failure to comply shall be grounds for an action by the Association, an aggrieved Unit Owner, or any person adversely affected, for recovery of damages, injunction or other relief.

### **4.2 Administration of Condominium**

The Condominium shall be administered in accordance with the provisions of the Act, this Declaration and the Bylaws.

### **4.3 Use Restricted: Use by Declarant**

1. The Units shall be occupied and used by Unit Owners and Occupants for residential purposes only.
2. The foregoing provisions of this Section or any other provision of this Declaration or the Bylaws notwithstanding, Declarant shall have an easement to maintain sales offices and models for sales of Units in the Condominium and for the sale of condominium units that Declarant develops or plans to develop on land adjacent to or in the general vicinity of the Condominium. Declarant shall have the right to relocate, from time to time, and to discontinue and reestablish, from time to time, with the Condominium, for not more than three (3) years after the last of the Units has been conveyed to a Unit Owner other than a Declarant, any one or more of such offices or models. Declarant also shall have the right to change the use or combination of uses of such offices or models, provided that such offices or models shall be used only for sales offices or models. The total number of such offices or models maintained at any time by a Declarant shall not exceed two (2), and the size of any such relocated or reestablished office or model shall not exceed the size of the largest Unit in the Condominium.
3. Declarant shall also have an easement to maintain signs on the Common Elements advertising the Condominium until all the Units have been conveyed to Unit Owners other than a Declarant. Declarant shall remove all such signs not later than two seventy (270) days after all of the Units have been conveyed to Unit Owners other than Declarant and shall repair or pay for the repair of all damage done by removal of such signs.

#### **4.4. Hazardous Use and Waste**

Nothing shall be done to or kept in any Unit or the Common Elements that will increase any rate of insurance maintained with respect to the Condominium without the prior written consent of the Board. No Unit Owner or Occupant shall permit anything to be done to or kept in his Unit or the Common Elements that will result in the cancellation of insurance maintained with respect to the Condominium, or that would be in violation of any law, or that will result in the commitment of waste (damage, abuse, or destruction) to or in his Unit or the Common Elements.

#### **4.5 Alterations of Common Elements**

No Unit Owner or Occupant, except Declarant during the Declarant Control Period, shall alter, construct anything upon, or remove anything from, the Common Elements, or paint, decorate, landscape or adorn any portion of the Common Elements, without the prior written consent of the Board.

#### **4.6 Prohibition of Renting for Transient or Hotel Purposes**

No Unit Owner shall rent his Unit for transient or hotel purposes, which, for the purposes of this Declaration shall be defined as either a rental for any period less than thirty (30) days or any rental if the lessee of the Unit is provided customary hotel services. Each permitted lease shall lease an entire Unit, shall be in writing, and shall be subject to this Declaration and the Bylaws, and any failure of the lessee to comply with the terms of such documents shall be a default under the lease. Any Unit Owner who enters into a lease of his Unit shall promptly notify the Association of the name and address of each lessee, the Unit rented, and the term of the lease. Other than the foregoing restrictions, each Unit Owner shall have the full right to lease his Unit.

#### **4.7 Pets**

Only two (2) domestic pets and only one (1) dog shall be allowed in the Condominium, except as may be provided by the rules and regulations promulgated from time to time by the Board or the Association or in the Bylaws. For the purposes of this paragraph, "domestic pets" shall be defined solely as dogs, cats or birds. Except for the foregoing, no other animals, livestock or poultry of any kind shall be raised, bred or kept on the Property.

#### **4.8 Parking**

No commercial or recreation automobile, van, truck, tractor, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer or any other commercial or recreational vehicle shall be parked on any portion of the Common Elements except in a closed garage for that Unit. For the purposes hereof, the term "recreational automobile" shall refer to an automobile, sport utility vehicle, minivan or pick-up truck upon which is displayed permanent painted commercial or advertising displays, lettering or logos. The foregoing restriction shall not apply to sales trailers, construction trailers or other vehicles which may be used by Declarant and its agents and contractors in the conduct of their business prior to completion of the Condominium, and shall not apply to service vehicles which are temporarily parked while service contractors are providing temporary service work in one or more Units in the Condominium or on the Common Elements.

No Unit Owner or Occupant shall repair or restore any vehicle of any kind upon the property except in the closed garage of that Unit, except for emergency repairs and then only to the extent necessary to enable movement thereof to a proper repair facility. Each parked vehicle must display a valid current license plate.

#### **4.9 Exterior and Visible Interior Improvements**

1. No awnings, shades, screens or other item shall be attached to, hung or used on the exterior of any window or door of a Unit or on the exterior of any building without the prior written consent of the Board. All shades, blinds, drapery linings and other window treatments visible from the exterior of a

Unit on any window or door shall be white or off-white. Outside clothes lines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained on any portion of the Condominium, nor shall any clothing, rugs, or any other item be hung on any railing or fence enclosing any balcony, porch, patio or deck.

2. No Unit Owner shall install any electrical or telephone wire, television antenna, air conditioning unit, or other machine anywhere on the Condominium in such a fashion that it is visible anywhere outside of a Unit without the prior written consent of the Board.

#### **4.10 Prohibitions on Use of Common Elements**

Except with specific written approval of the Board, the Common Elements, including Limited Common Elements, shall not be used for temporary or permanent storage or supplies, personal property, trash or refuse of any kind, other than in common trash receptacles place at the discretion of the Board, nor shall such areas be used in any way for the drying or airing of clothing, rugs or other fabrics. Entrances, sidewalks, yards, driveways, parking areas and stairways shall not be obstructed in any way. No activities shall be carried on nor condition maintained by any Unit Owner, either in his Unit or upon the Common Elements, if such activities should deploy, or tend to despoil the appearance of the Property.

#### **4.11 Nuisances**

No nuisances shall be allowed upon the Property and no person shall engage in any use, practice or activity upon the Property which is noxious, offensive or a source of annoyance to Unit Owners or their tenants or which reasonably interferes with the peaceful possession and proper use of the Condominium Property by any Unit Owner and/or tenants. No exterior speakers, horns, whistles, bells or other sound devices except security devices used exclusively for security purposes, shall be located, used or placed on the Property. 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 who shall dump or place (or permit his family, tenants, guests or agent to do so) any trash or debris upon any portion of the Property shall be liable to the Association for the actual cost of removal thereof or the sum of \$150.00, whichever is greater, and the same shall be added to and become part of the assessment next coming due to which the Unit Owner of his Unit is subject. No Unit Owner shall permit any use of a Unit or of the Common Elements which will increase the rate of insurance upon the Property. The Association and its Agent shall have the right to remove any item or items left outside a Unit on the Common Elements or hanging from a balcony.

#### **4.12 Lawful Use**

No immoral, improper or unlawful use shall be made of the Condominium Property or any part thereof. All valid laws, zoning ordinances and regulations of governmental bodies having jurisdiction thereof shall be observed.

#### **4.13 Rules and Regulations**

In addition to the foregoing restrictions, conditions and covenants concerning the use of the Condominium, reasonable rules and regulations not in conflict therewith and supplementary thereto may be promulgated and amended from time to time by the Board or the Association, as more fully provided in the Bylaws.

#### **4.14 Restrictions, Conditions and Covenants To Run With Land**

Each Unit Owner and Occupant shall be subject to all restrictions, conditions and covenants of this Declaration, and all such restrictions, conditions and covenants shall be deemed to be covenants running with the land, and shall bind every person having any interest in the Property, and shall inure to the benefit of every Unit Owner.

## **Article V: Assessments**

### **5.1 Assessment Liens**

The Board has the power to levy assessments against the Units for Common Expenses. Such assessments shall be a lien on the Units against which they are assessed, and if any payment thereof becomes delinquent, the lien may be foreclosed and the Unit sold, or a money judgment obtained against the persons liable therefor, all, as set forth in the Bylaws.

### **5.2 Personal Liability of Transferees; Statement; Liability Of First Mortgagee**

1. The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall pass to the transferee of said Unit unless said delinquent assessments are expressly assumed by said transferee.
2. Any transferee referred to in (a) above shall be entitled to a statement from the Board, pursuant to Section 6.2 of the Bylaws, and such transferee's Unit shall not be subject to a lien for any unpaid assessments against such Unit in excess of the amount therein set forth.
3. Where a First Mortgagee, or other person claiming through such First Mortgagee, pursuant to the remedies provided in a deed of trust, or by foreclosure or by deed, or assignment, in lieu of foreclosure, obtains title to a Unit, the liability of such First Mortgagee or such other person for assessments shall be only for the paid assessments, or installments thereof, that would become delinquent, if not paid, after acquisition of title. For purposes hereof, title to a Unit shall be deemed acquired by foreclosure upon expiration of the applicable period of redemption.
4. Without releasing the transferor from any liability therefor, any unpaid portion of assessments which is not a lien under (b) above or, resulting, as provided in (c) above, from the exercise of remedies in a deed of trust, or by foreclosure thereof or by deed, or assignment, in lieu of such foreclosure, shall be a Common Expense collectible from all Unit Owners, including the transferee under (b) above and the First Mortgagee or such other person under © above who acquires ownership by foreclosure or by deed, or assignment, in lieu of foreclosure.

### **5.3. Prohibition of Exemption from Liability for Contribution Toward Common Expenses**

No Unit Owner may exempt himself from liability for his share of the Common Expenses assessed by the Association by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit or otherwise.

## **Article VI: Management, Maintenance, Repairs, Replacements, Alterations and Improvements**

### **6.1 Common Elements**

**(a) By the Association** The management, replacement, maintenance, repair, alteration, and improvement of the Common Elements shall be the responsibility of the Association, and, subject to the provisions of Section 6.2 hereof, the cost thereof shall be a Common Expense to the extent not paid by Unit Owners pursuant to Section 6.1(b) hereof. All damage caused to a Unit by any work on or to the Common Elements done by or for the Association shall be repaired by the Association, and the cost thereof shall be a Common Expense.

**(b) By Unit Owners** Each Unit Owner shall pay all costs to repair and replace all portions of the Common Elements that may become damaged or destroyed by reason of his intentional acts or the intentional acts of any Occupant of his Unit. Such payment shall be made upon demand made by the Association.

## **6.2 Common Expenses Associated with Limited Common Elements or Benefitting Less Than All Units**

1. Any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element shall 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.
2. In addition, the Association may assess any Common Expense benefitting less than all of the Units against the Units benefitted in proportion to their Common Expense liability.

## **6.3 Units**

Each Unit Owner shall maintain his Unit at all times in a good and clean condition, and repair and replace, at his expense, all portions of his Unit; shall perform his responsibilities in such manner as not to unreasonably disturb other Occupants; shall promptly report to the Board, or its agents, any defect or need for repairs the responsibility for which is that of the Association; and, to the extent that such expense is not covered by the proceeds of insurance carried by the Association, shall pay all costs to repair and replace any portion of another Unit that has become damaged or destroyed by reason of his own acts or omissions, or the acts or omissions of any Occupant of his Unit. Such payment shall be made upon demand by the Unit Owners of such other Unit. Nothing herein contained shall modify any waiver by insurance companies of rights subrogation.

## **6.4 Waiver of Claims**

Except only as provided in Section 6.5(a) and (b), the Association agrees that it shall make no claim against a Unit Owner or Occupant, and each Unit Owner and Occupant agrees that he shall make no claim against the Association, the members of the Board, officers of the Association, or employees or agents of any thereof, or against any manager retained by the Board, or his or its officers, directors, employees or agents, or other Unit Owners or Occupants, for any loss or damage to any of the Property, or to a Unit or personal property therein, even if caused by the omission or neglect of any one or more of such persons and all such claims are hereby waived and released; provided, that this waive shall not apply to any such loss or damage due to intentional acts.

## **6.5 Right of Entry**

**By the Association** The Association, and any person authorized by the Association, may enter any Unit or any of the Limited Common Elements in case of any emergency or dangerous conditions or situation originating in or threatening that Unit or any of the Limited Common Elements. The Association, and any person authorized by the Association, after reasonable notice to a Unit Owner or Occupant, may enter that Unit or any of the Limited Common Elements for the purposes of performing any of the Association's powers under the Act, this Declaration or the Bylaws with respect to that or any other Unit, any Limited Common Elements, or the Common Elements. Notwithstanding Section 6.4, the Association shall be responsible for the repair of any damaged caused by the Association or its authorized person to the entered Unit, and the cost thereof shall be a Common Expense. All such entries shall be made and done so as to cause as little inconvenience as possible to the Unit Owner and Occupant of the entered Unit or any portion of the Limited Common Elements allocated to the Unit Owner.

**By Unit Owners** Each Unit Owner and Occupant shall allow other Unit Owners and Occupants, and their representatives, to enter his Unit, or Limited Common Elements allocated to his Unit, when reasonably necessary for the purpose of altering, maintaining, repairing or replacing the Unit, or performing the duties and obligations under the Act, this Declaration or the Bylaws, of the Unit Owner or Occupant making such entry, provided that requests for entry are made in advance and that such entry is at a time convenient to the Unit Owner or Occupant whose Unit or Limited Common Element is to be entered. In case of an emergency or dangerous condition or situation, such right of entry shall be immediate. Notwithstanding Section 6.4, the person making such entry shall be responsible for repair of any damage caused by such person to the entered Unit or Limited Common Element.

## **Article VII: Insurance**

### **7.1 Casualty Insurance**

The Association shall maintain, to the extent available, casualty insurance upon the Property in the name of, and the proceeds thereof shall be payable to, the Association, as trustee for all Unit Owners and First Mortgagees as their interest may appear, and be disbursed pursuant to the Act. Such insurance shall be in an amount equal to not less than one hundred percent (100%) full insurable value of the Property on a replacement cost basis exclusive of land, excavations, foundations and other items normally excluded from property policies, and shall insure against such risks and contain such provisions as the Board from time to time shall determine, but at a minimum shall conform in all respects to the requirements of the Act, and shall provide that, notwithstanding any provision thereof that gives the insurer an election to restore damage in lieu of making a cash settlement, such option shall not be exercisable, if such restoration is prohibited pursuant to Section 47C-3-113(h) of the Act. In addition, if any fixtures, property or equipment used or kept in a Unit are financed by the proceeds of any First Mortgage on such Unit, then the Association, at its option, may obtain insurance coverage for such fixtures, property or equipment.

### **7.2 Public Liability Insurance**

The Association shall maintain public liability insurance for the benefit of the Unit Owners, Occupants, the Association, the Board, the managing agent, if any, the Declarant, and their respective officers, directors, agents and employees, in such amounts and with such such coverage as shall be determined by the Board; provided that the public liability insurance shall be for at least One Million Dollars (\$1,000,000) per occurrence for death, bodily injury and property damage. Said insurance shall comply in all respects to the requirements of the Act and shall contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured; insure all of such benefitted parties against such liability arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the streets, sidewalks and public spaces adjoining the Condominium; and insure the Association, the Board, the manager, if any, and their respective officers, directors, agents and employees against such liability arising out of or in connection with the use or maintenance of the Units.

### **7.3 Fidelity Coverage**

If available at reasonable cost, fidelity coverage shall be maintained by the Association in commercial blanket form covering each director and officer of the Association, any employee or agent of the Association and any other person handling or responsible for handling funds of the Association in the face amount of at least the greater of (i) one and one-half (1-½) times the estimated annual operating expenses and reserves of the Association, or (ii) the sum of three months' aggregate assessments on all Units plus the Association's reserve funds. Such bonds shall contain an appropriate endorsement to cover persons who serve without compensation. The premium on such bonds shall be a Common Expense.

### **7.4 Insurance Unavailable**

If the insurance described in Section 7.1, 7.2 or 7.3 is not reasonably available, the Association shall promptly cause notice of such fact to be hand-delivered or sent prepaid by United States mail to all Unit Owners.

### **7.5 Other Insurance**

The Association may procure such other insurance, including worker's compensation insurance, as it may from time to time deem appropriate to protect the Association or the Unit Owners. If at least one Unit is subject to mortgage financing, the Association shall obtain and keep in force such insurance as such mortgagee shall reasonably require from time to time.

### **7.6 Insurance Trustee**

The Board may engage, and pay as a Common Expense, any appropriate person to act as an insurance trustee to receive and disburse insurance proceeds upon such terms as the Board shall determine, consistent

with the provisions of the Act and this Declaration.

### **7.7 Individual Policy for Unit Owners**

Each Unit Owner may obtain insurance, at his own expense, affording personal property, additional living expense. Condominium assessment, personal liability, and any other coverage obtainable, to the extent and in the amounts such Unit Owner deems necessary to protect his own interests; provided that any such insurance shall contain waivers and shall provide that it is without contribution as against the insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the Association due to the proportion of insurance purchased by a Unit Owner under this Section, such Unit Owner shall be liable to the Association to the extent of such reduction and shall pay the amount of such reduction to the Association upon demand, and assigns the proceeds of his insurance, to the extent of such reduction, to the Association.

## **Article VII: Casualty Damage**

If all or any part of the Property shall be damaged or destroyed, the same shall be repaired or replaced unless: (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (3) the Unit Owners elect not to rebuild or replace by one hundred percent (100%) vote. All proceeds of insurance shall be used and applied in accordance with the provisions of Section 47C-3-113(e) and (h) of the Act.

## **Article IX: Condemnation**

In the event of taking by eminent domain, or by a conveyance in lieu thereof, of all or any part of the Property, the awards paid on account thereof shall be applied in accordance with Section 47C-1-107 of the Act.

## **Article X: Termination**

The Condominium may be terminated only in strict compliance with Section 47C-2-118 of the Act and the written consent of the Retail Condominium Association.

## **Article XI: Amendment**

This Declaration may be amended only in strict compliance with the act, including, without limitation, Sections 47C-2-105 and 47C-2-117 of the Act, except that no amendment altering or impairing Special Declarant Rights may be made without the written consent of Declarant.

## **Article XII: Right of First Mortgagees**

The following provisions shall take precedence over all other provisions of this Declaration and the Bylaws:

### **12.1 Amendments during Declarant Control Period**

Any amendments to this Declaration or to the Bylaws during the Declarant Control Period shall be subject to the prior approval of all First Mortgagees provided, however, that, if any First Mortgagee fails to respond to a written request for approval within thirty (30) days of said request, approval shall be deemed to have been given by such First Mortgagee.

### **12.2 Availability of Condominium Documents, Books, Records and Financial Statements**

The Association shall, upon request and during normal business hours, make available for inspection by Unit Owners and the First Mortgagees and the insurers and guarantors of a First Mortgage on any Unit, current copies of the Declaration, the Bylaws, other rules and regulations governing the Condominium and the books, records, and financial statements of the Association. The Association shall provide an audited financial statement for the preceding fiscal year if requested in writing by a First Mortgagee or insurer or

guarantor of a First Mortgage. The Association shall, upon request and during normal business hours, make available for inspection by prospective purchasers of Units, current copies of the Declaration, Bylaws, the Rules and Regulations governing the Condominium, and the most recent annual audited financial statement.

### **12.3 Successors' Personal Obligation for Delinquent Assessments**

The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the successors in title or interest to said Unit unless said delinquent assessments are expressly assumed by them.

### **12.4 Rights of Action**

The Association and any aggrieved Unit Owner shall have a right of action against Unit Owners and any aggrieved Unit Owner shall have a right of action against the Association for failure to comply with the provisions of this Declaration, the Bylaws and the Rules and Regulations, and decisions of the Association made pursuant to authority granted to the Association in this Declaration and the Bylaws.

### **12.5 Management and Other Agreements**

Any management agreement between the Declarant and a professional manager or any other agreement providing for services of the developer, sponsor, builder or Declarant involving the Condominium shall be terminable by either party thereto without cause and without payment of a termination fee at any time after expiration of the Declarant Control Period. Any agreement entered into after the Declarant Control Period between the Association and any professional manager involving the Condominium shall be terminable upon not more than ninety (90) days' prior written notice and shall not exceed a term of three (3) years, subject to renewal by the consent of both parties.

### **12.6 Right of First Refusal**

The right of a Unit Owner to sell, transfer, mortgage or otherwise convey his interest in a unit shall not be subject to any right of first refusal.

### **12.7 Consent of First Mortgagees**

This Section 12.7 shall be effective only if, at the time this Section would apply, at least one Unit is subject to mortgage financing. Any decision to terminate the Condominium for reasons other than substantial destruction or condemnation of the property shall require the prior written consent of Eligible Mortgage Holders, as defined in Section 12.9 hereof, representing at least 67% of the votes allocated to Units subject to First Mortgages held by Eligible Mortgage Holders, or such greater requirements specified by the Act. Except for any amendment to the Declaration made for the purpose of adding Additional Real Estate, if any, to the Condominium in accordance with the provisions hereof, any amendment to the Declaration or Bylaws which materially changes any of the following shall require the prior written consent of Unit Owners holding at least 67% of the total votes in the Association and of Eligible Mortgage Holders representing at least 51% of the votes allocated to Units subject to First Mortgages held by Eligible Mortgage Holders, or such greater requirements specified by the Act or hereunder:

1. voting rights;
2. reallocation of interest in the Common Elements or Limited Common Elements or rights to their use;
3. convertibility of Units into Common Elements or Common Elements into Units;
4. imposition of any restrictions on Unit Owner's right to sell, transfer or otherwise convey his Unit;
5. Restoration or repair of the Condominium (after damage or destruction or partial condemnation) in a manner other than that specified in this Declaration or the Bylaws;
6. Any action to terminate the legal status of the Condominium after substantial damage or destruction or condemnation; or

An addition or amendment to the Declaration or Bylaws shall not be considered material if it is for the purpose of correcting technical or typographical errors, or for clarification only.



## **12.8 Consent of First Mortgagees or Unit Owners**

This Section 12.8 shall be effective only if, at the time this Section would apply, at least one Unit is subject to mortgage financing. Unless First Mortgagees holding at least 51% of the votes allocated to First Mortgagees (except higher percentage as is required by law, of the First Mortgagees (based upon one vote for each First Mortgage owner) and Unit Owners (other than a Declarant) holding at least 67% of the total votes in the Association have given their prior written approval, or such greater requirements specified in the Act or hereunder have been satisfied, the Association shall not be entitled to:

1. by act or omission, seed or abandon or terminate the Condominium;
2. use hazard insurance proceeds for losses to any part of the Condominium (whether to Units or to Common Elements) for other than repair, replacement or reconstruction thereof subject to Article VII and Section 7.1 of Article VII hereof.

## **12.9 Notice**

Each First Mortgagee and each insurer or guarantor of a First Mortgage, upon written request stating its name and address and describing the Unit encumbered by the First Mortgage, held, insured, or guaranteed, shall be entitled to timely written notification by certified or registered mail, return receipt requested, by the Association of (i) any proposed action which requires consent of a specified percentage of First Mortgagees; (ii) any condemnation or casualty loss that affects either a material portion of the Condominium or the Unit securing its First Mortgage; (iii) any 60-day delinquency in the payment of assessments or charges owed by the Unit Owner of the Unit on which the First Mortgagee held its First Mortgage or in the performance of any obligation under this Declaration or the Bylaws by said Unit Owner; (or (iv) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association. Each First Mortgagee who has requested the Association to notify it of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders shall be considered an "Eligible Mortgage Holder." Any First Mortgagee who receives a written request by the Association, or any Unit Owner, to approve an addition or amendment of the Declaration or Bylaws who does not deliver or post to the requesting party a negative response within 30 days shall be deemed to have approved such request.

## **12.10 Assessments**

Assessments shall be due and payable in monthly installments. As provided in Article V of the BYlaws and as legally required by Section 47C-3-115 of the Act, Declarant shall pay all accrued expenses of the Condominium until assessments are levied against the Units. An assessment shall be deemed levied against a Unit upon the giving of notice by the Board to a member of the Association who is a Unit Owner of that Unit. Unit Owners shall have no obligation to pay monthly assessments until an assessment is levied. Assessments will begin at such time as the Board elects.

## **12.11 Rights of First Mortgagee: Insurance Proceeds or Condemnation Awards**

With respect to First Mortgages held by or for the benefit of First Mortgagees, no provision of this Declaration or the Bylaws shall be deemed to give a Unit Owner, or any other party, priority over any rights of a First Mortgagee pursuant to its First Mortgage on said Unit Owner of insurance proceeds or condemnation awards for losses to or taking of Units and/or Common Elements.

# **Article XIII: General Provisions**

## **13.1 Conflict with the Act; Severability**

Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or

effect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstances.

### **13.2 Interpretation of Declaration**

Whenever appropriate singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely to the part in which they appear.

### **13.3 Captions**

The captions herein are only for convenience and reference and do not define, limit or describe the scope of this Declaration, or the intent of any provision.

### **13.4 Exhibits**

Exhibits A, B, C, D, E and F attached hereto are hereby made a part hereof.

### **13.5 Invalidity**

The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity or enforceability or effect of the remainder of this Declaration, and in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

### **13.6 Waiver**

No provision of this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

### **13.7 Law Controlling**

This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

## **Appendix**

### **Execution Signature Page**

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

GATEWAY HOMES IV, LLC, A North Carolina limited liability company By: **Doug Levin, signed Doug Levin, Manager**

STATE OF North Carolina COUNTY OF Mecklenburg

I, a Notary Public of the County and State aforesaid, certify that Doug Levin, Manager of GATEWAY HOMES IV, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this **25th** day of **November**, 2002.

**Brenda V. Blockwell, signed** Notary Public

My Commission Expires: **November 16, 2004**

## CONSENT AND SUBORDINATION OF MORTGAGEE

Bank of America, N.A. holder of that certain Note secured by that certain deed of trust dated October 4, 2002 and recorded in Book 14186 at Page 637 in the Mecklenburg County Public Registry and PRPLAP, Inc., Trustee, do hereby consent to the terms, conditions, and covenants in the foregoing Declaration and the Bylawys described therein, and agree that the lien of said deed of trust, and the interest of the beneficiary therein, are subject and subordinate, inall respects, to the terms and conditions, and covenants contained in said Declaration, including all exhibits, supplemental declarations and other amendments thereto.

IN WITNESS WHEREOF, the undersigned has caused this Consent to be duly executed this 25th? day of November, 2002.

Bank of America, N.A., Lender By: **signed, unintelligible** Its: Vice President

Attest: **signed, unintelligible** Assistant Secretary

PRLAP, Inc., Trustee By: **signed, unintelligible** Its: Vice President

[PRLAP, Inc. Corporate Seal]

I **Jacqueline C. McIver** a Notary Public, do hereby certify that **Sam Kottyan** personally came before me this day and acknowledged that she is Assistant Secretary of Bank of America, National Association, a national banking organization, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Vice President, sealed with its corporate seal and attested by **Sam Kottyan** as its Assistant Secretary.

Witness my hand and official seal, this the 22nd day of November, 2002. **Jacqueline C. McIver, signed**  
Notary Public

My Commission Expires: 06-29-05

[repeated]

## EXHIBIT A: TO DECLARATION OF THE COLONY LOFTS CONDOMINIUM

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

TRACT 1: BEGINNING at a point located South 47-23-41 West 30.90 feet from an existing iron rebar located at the intersection of the southerly margin of the public right-of-way known as North Davidson Street and the westerly margin of the public right-of-way known as Patterson Street, and running from said Beginning Point, South 30-00-00 East 12.33 feet to a point; thence South 60-00-00 West 0.33 feet to a point; thence South 30-00-00 East 13.83 feet to appoint; thence North 60-00-00 East 0.33 feet to appoint; thence South 30-00-00 East 12.33 feet to a point; thence South 60-00-00 West 0.33 feet to a point; thence South 30-00-00 East 1.33 feet to a point; thence South 60-00-00 West 21.75 feet to a point; thence North 30-00-00 West 1.33 feet to a point; thence South 60-00-00 West 22.08 feet to a point; thence South 30-00-00 East 1.33 feet to a point; thence South 60-00-00 West 21.75 feet to appoint; thence North 30-00-00 West 1.33 feet to appoint; thence South 60-00-00 West 21.92 feet to appoint; thence North 30-00-00 West 43.00 feet to a point; thence North 60-00-00 East 21.73 feet to appoint; thence South 30-00-00 East 1.33 feet to appoint; thence North 60-00-00 East 22.08 feet to a point; thence North 30-00-00 West 1.33 feet to a point; thence North 60-00-00 East 21.75 feet to appoint; thence South 30-00-00 East 1.33 feet to appoint; thence North 60-00-00 East 22.10 feet to the Point and Place of BEGINNING and being shown as Lots 5,6,7,8 and 9 on Condominium Plat The Colony Lots Phase 1 Map 4 dated October 30, 2002, prepared by Mitcham & Associates, P.A. for a more particular description of said property.

TRACT 2: BEGINNING at a point being located the following three (3) courses and distances from the northeasternmost corner of that property conveyed to Berne Investments in Deed Book 4278 at Page 898 in the Mecklenburg County Public Registry: (1) South 81-46-12 West 38.35 feet to an existing iron rod, (2) North 08-04-18 West 52.50 feet to an existing iron rod in the southerly margin of the public right-of-way known as North Davidson Street, and (3) South 79-03-50 East 27.67 feet to the Point and Place of BEGINNING, and

running from said Beginning Point, North 60-00-00 East 22.08 feet to a point; thence South 30-00-00 East 1.33 feet to a point; thence North 60-00-00 East 44.00 feet to point; thence North 30-00-00 West 1.33 feet to a point; thence North 60-00-00 East 21.75 feet to a point; thence South 30-00-00 East 43.00 feet to a point; thence South 60-00-00 West 21.92 feet to a point; thence South 30-00-00 East 1.33 feet to a point; thence South 60-00-00 West 43.67 feet to a point; thence North 30-00-00 West 1.33 feet to a point; thence South 60-00-00 West 21.42 feet to a point; thence North 30-00-00 West 4.00 feet to a point; thence South 60-00-00 West 1.33 feet to a point; thence North 30-00-00 West 12.33 feet to a point; thence North 60-00-00 East 0.33 feet to a point; thence North 30-00-00 West 13.83 feet to a point; thence South 60-00-00 West 0.33 feet to a point; thence North 30-00-00 West 12.33 feet to the Point and Place of BEGINNING, and shown as Lots 1, 2, 3 and 4 of Condominium Plat the Colony Lots Phase 1 Map 4 dated October 30, 2002, prepared by Mitcham & Associates, P.A. for a more particular description of said property.

TOGETHER WITH rights of ingress, egress and regress over the common open space shown on the afore-referenced plat pursuant to that Reciprocal Easement Agreement dated **November 25**, 2002 between Shops At the Colony Owners Association, Inc. and The Colony Lofts Condominium Homeowners Association, Inc. recorded contemporaneously herewith.

LESS AND EXCEPT that portion of the above-reference property which is being created pursuant to that Declaration of Shops at The Colony Condominium recorded in Book 14510 at Page 542 in the Mecklenburg County Public Registry.

#### **EXHIBITS C AND D: PLATS AND PLANS**

The condominium plat of survey for The Colony Lofts Condominium dated November 12, 2002, prepared by Mitcham & Associates, P.A., entitled "Condominium Plat the Colony Lofts Condominium Phase 1 Map 4" and the plans for the Colony Lofts Condominium, prepared by Charles E. Leaf, AIA, dated November 13, 2002, together consisting of three (3) sheets, which are attached to this Declaration at the time filed by record is duly filed in the Office of the Register of Deeds for Mecklenburg County, North Carolina in Condominium Unit File No. 630. Said survey and plans are incorporate herein by reference as though fully set out herein.