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BOOK 1979 PAGE 285

AMENDED AND RESTATED DECLARATION OF UNIT OWNERSHIP
FOR THE FOUNTAINS CONDOMINIUM

This Amended and Restated Declaration of Unit Ownership is made on the 16th day of August 1999 by THE FOUNTAINS UNIT OWNERS ASSOCIATION, INC. ("Association" and "Declarant"), a North Carolina Corporation, 214 West Rosemary Street, Chapel Hill, NC 27516.

WITNESSETH:

WHEREAS, West End I Partners Limited Partnership ("West End") recorded a Declaration of Unit Ownership at Book 1958, Page 125, Orange County Registry for The Fountains Condominium (the "Declaration") which was amended by the First Amendment to the Declaration of Unit Ownership recorded at Book 1960, Page 323 Orange County Registry ("First Amendment"); and

WHEREAS, West End and TLCCH, LLC are the owners of 100% of the units and the common interests in The Fountains Condominium (the "Condominium"); and

WHEREAS, at a duly called and conducted meeting of the Association, 100% of the owners of units and interests in the Condominium acting in accordance with Section 19 of the Declaration, voted to amend and restate the Declaration as set out below:

NOW, THEREFORE, the Declaration is amended and restated as follows:

Declarant hereby publishes and declares that pursuant to the North Carolina Condominium Act (Chapter 47C of the North Carolina General Statutes) all of the property

Return to:
Northern, Blue

described in Section 2 below is held and will be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into condominium units and will be deemed to run with the land and will be a burden and a benefit to Declarant, its successors and assigns, and any person acquiring or owning an interest in the real property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. Definitions: To the extent applicable to this declaration and not inconsistent herewith, all definitions contained and set forth in Chapter 47C of the General Statutes of North Carolina, as the same may be amended from time to time, (herein referred to as "the Act") are incorporated herein by reference and will have the same force and effect as if set forth verbatim and made a part hereof.

2. Descriptions and Unit Designations:

(a) The plat and plans describing the Condominium are recorded at Plat Book 83, Pages 176 through 182 as amended at Plat Book 83, Page 185 and as further amended at Plat Book 84, Pages 21 through 32, Orange County Registry to which reference is made for a more particular description.

(b) The building located or to be located upon this land is a four-story, multi-level building, of composite steel and concrete construction. The building will have underground parking, with a mix of common parking and separate reserved parking spaces. The building will provide elevator access to all floors (including the main underground parking level), with

restricted access to residential floors. Hot water heaters will be an "energy-efficient" type. Residential units will be pre-wired for cable and telephones. Windows will be high quality metal windows, double glazed, insulated glass. Residential units will be carpeted throughout, except for ceramic tile floors in the bathrooms and vinyl flooring in the kitchen and laundry areas, although custom flooring may be installed by the unit owner(s). Walls will be standard drywall (sheetrock) construction, installed with screws rather than nails, on metal studs. Each residential unit will have direct access to an exterior balcony area, as a limited common element associated therewith.

The building will have restricted uses for each floor. The underground levels will be restricted to parking and storage use. The first floor will be restricted to retail and office use, and will contain five (5) units, ranging in size from 900 square feet to 3,761 square feet, as shown on the recorded plans. The second floor will be restricted to retail and office use, and will contain one (1) unit consisting of ranging in size from 12,365 square feet, as shown on the recorded plans. The third floor will be restricted to office and retail use and will contain eight (8) units, ranging in size from approximately 972 square feet to 1,678 square feet, as shown on the recorded plans. The fourth floor will be restricted to residential use, and will contain four (4) units of 1,690 square feet each, as shown on the recorded plans.

The plans described Section 2 above show the particulars of the building including the layout, location, ceiling and floor elevations, unit numbers and dimensions of the units, the limited common elements associated with each unit, and location of the common elements affording access to each unit.

(c) The unit designation and approximate square footage of each unit and the floor

level on which said unit is located are as follows:

<u>Floor Level</u>	<u>Unit Designation</u>	<u>Square Footage</u>
1	101	1,085
1	102	929
1	103	2,087
1	105A	3,310
1	105B	<u>3,761</u>
	SUBTOTAL	11,172
2	201	<u>12,365</u>
	SUBTOTAL	12,365
3	301	1,671
3	302	1,166
3	303	1,315
3	304	973
3	305	1,026
3	306	1,066
3	307	1,108
3	308	<u>1,030</u>
	SUBTOTAL	9,355
4	401	1,699
4	402	1,668
4	403	1,645
4	404	<u>1,713</u>
	SUBTOTAL	6,725
	TOTAL SQUARE FOOTAGE	39,617

The unit designation of each condominium unit, its location, its dimensions, approximate area, limited common elements, and common facilities to which it has immediate access, and other data concerning its proper identification are set forth in the recorded plans.

Each unit is bounded both as to horizontal and vertical boundaries by the interior surface of its perimeter walls, ceilings and floors which are shown on said plans, as provided in General

Statutes Section 47C-2-102, subject to such encroachments as are contained in the building, whether the same now exist or may be caused or created by construction, settlement or movement of the building, or by permissible repairs, construction or alteration, as provided in General Statutes Section 47C-2-114.

Each unit will also include as a part thereof the HVAC unit associated therewith and appurtenant thereto, which HVAC units will be located on the roof of the building in which the respective unit is located.

3. **Common Elements:** The common areas and facilities consist of all parts of the building situated on the property described hereinabove, other than the individual units therein and described in Section 2 hereinabove, including, without limitation, the following (except such portions of the following as may be included within an individual unit):

- (a) The land on which the building has been erected and all land surrounding the building as is more fully described on pages 1 and 2 of this Declaration.
- (b) All foundations, columns, girders, beams, supports and other structural members.
- (c) All exterior walls and interior walls except those partitioned walls wholly within a unit.
- (d) Roofs, terraces, except for those designated as limited common areas on the recorded plans, outside steps, walks, parking lots, except for those parking spaces designated as limited common areas on the recorded plans, drives, bridge or bridges, and entrances to and exits from the building(s).
- (e) All central and appurtenant installations for services such as power, light, telephone, gas, hot and cold water, heat, refrigeration, air conditioning, incinerating and all other mechan-

ical equipment pertaining thereto existing for common use, (including the wiring, duct work, or other installations for the individual HVAC units) and not separately metered for individual units.

(f) All gas, water, and sewer pipes.

(g) All other parts of the property and all apparatus and installations existing in the building(s) or upon the property intended for common use or necessary for or convenient to the existence, maintenance or safety of the property.

(h) The initial undivided interest of each unit owner in the common elements above described is as set forth on the attached Exhibit A. The undivided interest of each unit owner in the common elements as herein set forth shall not be altered except by Declarant or by The Fountains Unit Owners Association, Inc. (the "Association") as herein provided in connection with the subdivision of units, the addition of units, the relocation of boundaries between adjoining units, or otherwise with the unanimous consent of all unit owners and the holders of all liens affecting any units, expressed in an amendment to this Declaration duly recorded.

(i) Certain units will have limited common elements in the nature of terraces or balconies appurtenant thereto, as shown and designated on the recorded plans. Each unit shall also have reserved parking space(s) on one of the underground levels as shown and designated on the recorded plans and such additional parking spaces as may be designated by the Association from time to time which will be limited common elements. Limited common elements will be available for use only by the owner(s) of the unit associated therewith, their successors, assigns, lessees, permittees, or invitees.

4. Association of Unit Owners: The administration of the condominium project shall

be vested in its association of unit owners to be known as The Fountains Unit Owners Association, Inc. (the "Association") in accordance with the Bylaws of The Fountains Unit Owners Association, Inc. appended hereto as an exhibit and incorporated by reference. The membership of the Association shall consist of all of the unit owners of the project, including the Declarant so long as said Declarant retains ownership of one or more of the units. The owner of any unit, upon acquiring title thereto, shall automatically become a member of said Association, and shall be required to remain a member thereof until such time as his, her, or its ownership of such unit ceases for any reason, when his, her or its membership in said Association shall automatically cease. Operation of the project and the maintenance, repair, replacement and operation of the common elements, and any additions and alterations thereto, shall be in accordance with the provisions of Chapter 47C of the North Carolina General Statutes, entitled "North Carolina Condominium Act", this Declaration, and the Bylaws of said Association.

5. Use. The building and each of the units shall be used only for the designated purposes set forth above, to wit: Units on Floors 1, 2 and 3 may be used only for retail or office purposes and units on Floor 4 may be used only for residential purposes. Any unit owner may delegate to tenants, in accordance with the Bylaws of the Association, his rights of possession, use and enjoyment of his unit and the common elements.

6. Person to Receive Service of Process: Josh Gurlitz, whose address is 214 West Rosemary Street, Orange County, Chapel Hill, North Carolina 27516, is hereby designated to receive service of process in any action which may be brought against or in relation to this condominium, and he will serve until such time as his successor is designated by the Association.

7. **Easements.** Declarant, the Association, and each unit owner shall have an easement in common with the other owners of all other units to use all pipes, wires, ducts, cables, conduits, public utility lines and other common elements located in any of the other units and serving his unit. Each unit shall be subject to an easement in favor of the Association and the owners of all other units to use the pipes, lines, wires, ducts, cables, conduits, public utility lines and other common elements serving the common areas or other units and located in such other unit. The Board of Directors of the Association may grant rights of way across or easements for utility purposes for the benefit of the property or adjacent tracts, including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone wires and equipment and electrical conduits and wires, under, upon, or within any portion of the common elements. Each unit owner hereby grants the Board of Directors an irrevocable power of attorney to execute, acknowledge and record for and in the name of each unit owner such instruments as may be necessary to effectuate the foregoing or any other provisions of this Declaration.

8. **Partitioning:** The common elements shall not be divided nor shall any right to partition any portion thereof exist. Nothing herein contained, however, shall be deemed to prevent ownership of a condominium unit by the entireties, jointly, or in common or in any other form by law permitted, or the subdivision or realignment of one or more units as herein provided.

9. **Liens:** While the property remains subject to this Declaration and the provisions of the North Carolina Condominium Act, no liens other than liens created to secure mortgage financing of individual units shall arise or be created against the common elements except with

the consent in writing of at least eighty percent (80%) of the votes allocated to all units, except such liens as may arise or be created against the several units and their respective common interests under the provisions of the North Carolina Condominium Act. Every agreement for the performance of labor, or the furnishing of materials to the common elements, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and the right to file a mechanic's lien or other similar lien against the common elements by reason of labor performed or materials furnished is waived.

10. **Nature of Interest in Units:** Every condominium unit, together with its undivided interest in the common elements, for all purposes shall be and it hereby is declared to be a separate parcel of real property and the unit owner thereof shall be entitled to the exclusive ownership and possession of its condominium unit subject only to the covenants, restrictions and easements as may be contained herein, the Bylaws of the Association, the Rules and Regulations adopted pursuant thereto, and the resolutions and decisions of the Board of Directors.

11. **Insurance:** Insurance coverage on the property shall be governed by the following provisions:

(a) **Ownership of Policies:** All insurance policies insuring the condominium property shall be purchased by the Association for the benefit of the Association and the unit owners and their mortgagees as their interests may appear, and provisions shall be made for the issuance to the mortgagees of unit owners certificates of mortgagee endorsements. Unit owners may, at their option, obtain insurance coverage at their own expense and upon their own personal property and for their personal liability and such other coverage as they may desire.

(b) **Coverage:** The building and all improvements upon the land and all personal property

included in the common elements shall be insured in an amount equal to the maximum insurable replacement value as determined annually by the Board of Directors with the assistance of the insurance company providing such coverage, and not less than eighty percent (80%) of the replacement cost. Such coverage shall provide protection against

(1) loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and

(2) such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use.

Public liability insurance shall be secured by the Association in such amount and with such coverage as shall be deemed necessary by the Board of Directors, including but not limited to an endorsement to cover liability of the unit owners as a group to a single unit owner. There shall also be obtained such other insurance coverage as the Board of Directors from time to time shall determine to be desirable and necessary.

(c) Premiums: Premiums for insurance policies purchased by the Board of Directors shall be paid by the Association as a common expense, and may be assessed in proportion to risk.

(d) Proceeds: All insurance policies purchased by the Board of Directors shall be for the benefit of the Association and the unit owners and their mortgagees as their interests may appear, and shall provide that all proceeds thereof shall be payable to the Board of Directors as insurance trustees under this Declaration. The sole duty of the Board of Directors as insurance trustees shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein or stated in the Bylaws and for the benefit of the unit owners and their mortgagees in the following shares:

(1) Proceeds on account of damage to common elements shall be held as and in the nature of an undivided share for each unit owner, such share being the same as each unit owner's undivided interest in the common elements as set forth herein.

(2) Proceeds on account of damage to units shall be held as follows:

(A) When the building is to be restored - for the owners of damaged units in proportion to the cost of repairing the damage suffered by each unit owner, which cost shall be determined by the Board of Directors, such proceeds to be held in undivided shares.

(B) When the building is not to be restored - an apportioned share for each unit owner of the damaged units with such apportionment to be a ratio identical to the ratio which each unit owner's undivided interest in the common areas and facilities bears to the total of such owners' interests.

(3) In the event a mortgagee endorsement has been issued as to a unit, the share of the unit owner shall be held in trust for the mortgagee and the unit owner as their interests may appear.

12. **Distribution of Insurance Proceeds:** Proceeds of insurance policies received by the Board of Directors as insurance trustees shall be distributed to or for the benefit of the beneficial owners in the following manner:

(a) **Expenses of the Trust:** All expenses of the insurance trustees shall be first paid or provision made therefore.

(b) **Reconstruction or Repair:** If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof as provided by Section 13 hereof. Any proceeds remaining after defraying such cost shall be

distributed to the beneficial owners.

(c) Failure to Reconstruct or Repair: If it is determined as provided in Section 13 that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial owners thereof.

13. Damage and Destruction: Except as hereinafter provided, damage to or destruction of the building shall be promptly repaired and restored by the Board of Directors using the proceeds of insurance on the building for that purpose and unit owners shall be liable for assessment of any deficiency; provided, however, if the building is more than two-thirds destroyed by fire or other casualty and the owners of the units to which at least eighty percent (80%) of the votes in the Association are allocated resolve not to proceed with reconstruction or restoration, then in that event the property shall either be (a) sold or otherwise transferred as provided in General Statutes Section 47C-2-118, or (b) deemed to be owned as tenants in common by the unit owners of the destroyed building and subject to the provisions of General Statutes Section 47C-2-118 as the same exists at the date hereof or as amended hereafter. The determination of whether to sell the property or to make the property subject to the provisions of General Statutes Section 47C-2-118 shall be by affirmative vote of the owners of the units to which at least eighty percent (80%) of the votes in the Association are allocated.

Any reconstruction or repair shall be in accordance with the plans of the original building, portions of which are attached hereto as exhibits; or if not, then according to the plans and specifications approved by the Board of Directors.

14. Reservation of Special Declarant Rights: For a period not exceeding 120 days after conveyance of seventy-five percent (75%) of all the units (including units which may be

created pursuant to special declarant rights) to unit owners other than a declarant, two (2) years after all declarant has ceased to offer units for sale in the ordinary course of business, or two (2) years after any development right to add new units was last exercised, whichever should first occur, Declarant reserves the following special rights:

(1) The right to complete improvements indicated on plats and plans filed with the Declaration, as provided in General Statutes Section 47C-2-109.

(2) The right to exercise any development right reserved herein as provided in General Statutes Section 47C-2-105(a)(8) and Section 47C-2-110, including but not limited to the right to subdivide or convert a unit previously created into additional units, common elements, or both.

(3) The right to maintain sales offices, management offices, signs advertising the condominium, and models in units or on common elements as provided in General Statutes Section 47C-2-115, provided that no more than one unit shall be used for such purposes at any one time.

(4) The right to use easements through the common elements for the purpose of making improvements within the condominium as provided in General Statutes Section 47C-2-116.

(5) The right to appoint or remove any officer of the Association or any member of the Board of Directors, subject to the limitations herein contained and those set forth in General Statutes Section 47C-3-103 (d) and (e).

15. Subdivision, Recombination, or Realignment of Units: Subsequent to the conveyance by Declarant of any unit, the owner thereof shall have the following special rights, subject to the limitations set forth in this Declaration, with respect to the subdivision,

recombination, or realignment of such unit:

(a) Retail/office units may be further subdivided, or recombined and resubdivided, into two (2) or more units, or the boundaries between adjacent units realigned, provided no unit containing less than 700 square feet shall be created as a result thereof.

(b) Residential units may be recombined and resubdivided, or the boundaries between adjacent units realigned, provided no additional units are thereby created and no unit containing less than 900 square feet shall be created as a result thereof.

(c) Any unit owner(s) desiring to effect such a subdivision, recombination, or realignment of the unit(s) owned thereby shall submit to the Association a Supplemental Declaration setting forth the proposed modification, all in such detail as may be reasonably required by the Association to insure compliance with this Declaration and the North Carolina Condominium Act, including but not limited to the proposed layout, location, ceiling and floor elevations, unit numbers, dimensions of the units, limited common elements associated with each unit, location of the common elements affording access to each unit, each unit's undivided interest in the common elements, and the votes associated therewith. Such Supplemental Declaration shall bear the verified statement of a registered architect or licensed professional engineer, certifying that said plans are an accurate copy of the plans of such unit(s), as built. The Association shall review such Supplemental Declaration for compliance with the Declaration and the North Carolina Condominium Act, and the costs and expenses associated therewith (including the Association's attorneys fees) shall be borne and paid by the unit owner(s) desiring to effect such modification. The Association, upon its review and approval of any such proposed Supplemental Declaration, shall cause such instrument to be executed by the Association on behalf of the unit owners and

duly recorded in the Register of Deeds in each county in which the Condominium is located.

16. **Subordination:** Nothing contained in this Declaration shall impair or defeat the lien of any mortgage or deed of trust made in good faith and for value, but the title to any unit or any interest therein is subject to this Declaration.

17. **Restrictions:**

(a) It shall be the responsibility of each unit owner and the Board of Directors to prevent the development of any unclean, unsightly, or unkept conditions of the building(s) or grounds on such property, which shall tend to decrease the beauty of the Condominium as a whole or the specific area.

(b) No noxious or offensive activity shall be carried on, in, or upon any unit, nor shall anything be done therein tending to cause embarrassment, discomfort, annoyance or nuisance to the Condominium or to other unit owners. There shall not be maintained in or upon any unit any plants, animals, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of other property in the Condominium by the other unit owners thereof. No one shall interfere with or otherwise restrict the free right of passage of the owners, their agents, servants, tenants, guests or employees over driveways or passageways leading to their respective units or to the parking areas.

(c) Each unit owner may install a business identification sign in the hallway outside the owners' unit in accordance with the rules and regulations adopted by the Association. The Association will maintain building directory at the entrance to the building. No other commercial signs (including "For Rent," "For Sale," and other similar sign), or property

identification signs, shall be erected or maintained on any unit, except during the initial period of Declarant control set forth above or with the written permission of the Board of Directors, or except as may be required by legal proceedings, it being understood that the Board of Directors will not grant permission for said signs unless their erection is reasonably necessary.

(d) Garbage and trash shall be disposed of only in areas specifically designated therefore.

(e) No structure of a temporary character shall be placed upon the property at any time.

(f) No tent, barn, storage shed, garage, tree house or other similar outbuilding or similar structure shall be placed on the property at any time, either temporarily or permanently.

(g) No trailer, camper, boat, mobile home, or any other motor vehicle other than conventional passenger automobiles or motorcycles or motor scooters shall be privileged to use the parking areas located and situate upon the project, and the Board of Directors shall from time to time designate parking spaces as assigned to the owner of each unit and reserved to the exclusive use of the unit owner.

(h) All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them for a period of twenty-five (25) years from the date of recordation of this Declaration, after which time said covenants shall be extended automatically for successive periods of ten (10) years unless the condominium is terminated as provided in General Statutes Section 47C-2-118.

(I) In the event of a violation or breach of any of the restrictions contained in this Declaration, the Bylaws, or the Rules and Regulations adopted by the Board of Directors, by

any property owner or guest, invitee, or agent of such owner, the Association, the owners of units, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach in any event and to recover reasonable attorney's fees associated with the enforcement thereof. In addition to the foregoing and in the event there shall have been any violation of these restrictions, Declarant shall have the right at any time until six (6) months from and after the date and time as of which all but one of the units shall have been sold by Declarant to enter upon the property where such violation exists and summarily abate or remove the same at the expense of the offending owner if after thirty (30) days' written notice of such violation it shall not have been corrected by the owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any right, reservation or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior thereto or subsequent thereto, and shall not bar or affect its enforcement.

18. Units Subject to Declaration. Bylaws, Rules and Regulations: All present and future owners, tenants and occupants of units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws and any Rules and Regulations that may be adopted in accordance with the Bylaws and the Declaration, Bylaws, Rules and Regulations may be amended from time to time. The acceptance of a deed of conveyance, or the entering into of a lease, or the entering into occupancy of any unit shall constitute an agreement that the provisions of this Declaration, Bylaws, and any Rules and Regulations which may be adopted are accepted and ratified by such owner, tenant or occupant and all of such provisions shall be deemed and

taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such unit as though such provisions were made a part of each and every deed of conveyance or lease.

19. **Amendment to Declaration:** Except in cases of amendments that may be executed by a Declarant as set forth in General Statutes Section 47C-2-117 (a), this Declaration may only be amended by the vote of at least sixty-seven percent (67%) in common interest of all unit owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws. No such amendment shall be effective until recorded in the Office of the Register of Deeds in each County in which the Property is located.

20. **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 provisions never had been included herein

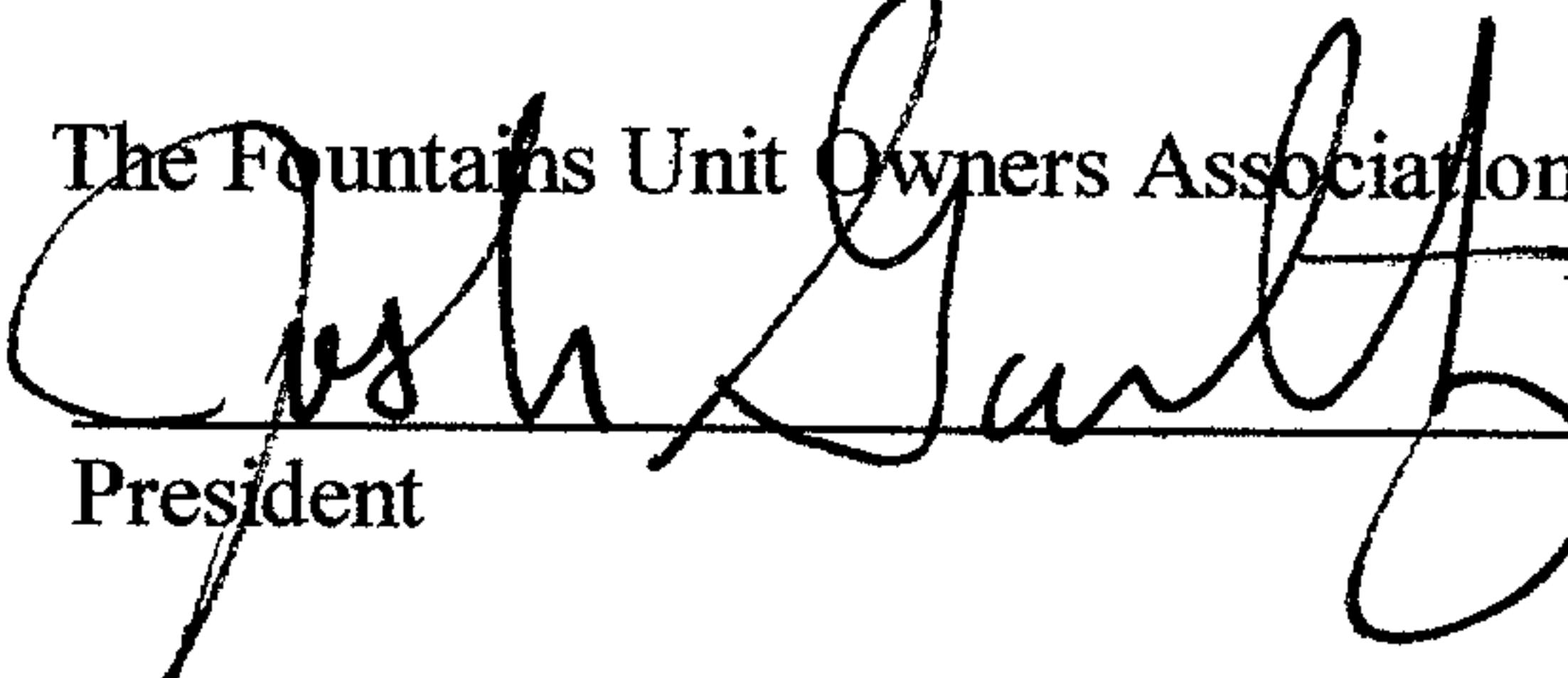
21. **Waiver:** No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same irrespective of the number of violations or breaches which may occur.

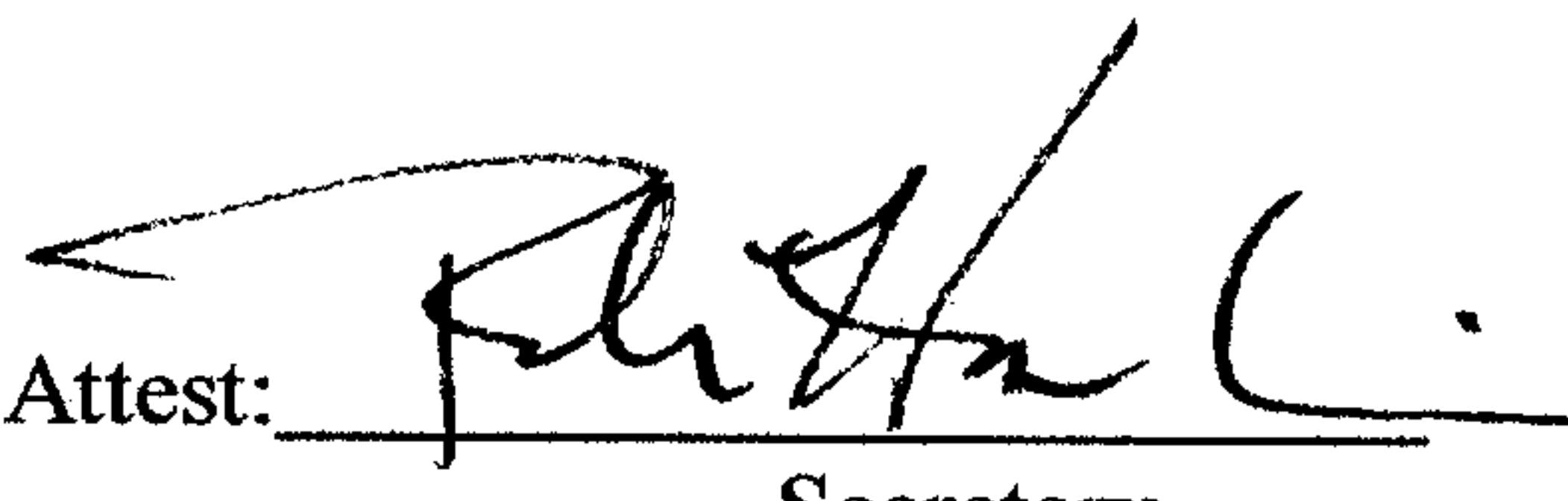
22. **Captions:** The captions herein are inserted only as a matter of convenience and for reference and such shall not be construed to define, limit or describe the scope of this Declaration nor the intent of any provision hereof.

23. **Law Controlling:** This Declaration and the Bylaws attached hereto shall be construed and controlled by and under the laws of the State of North Carolina.

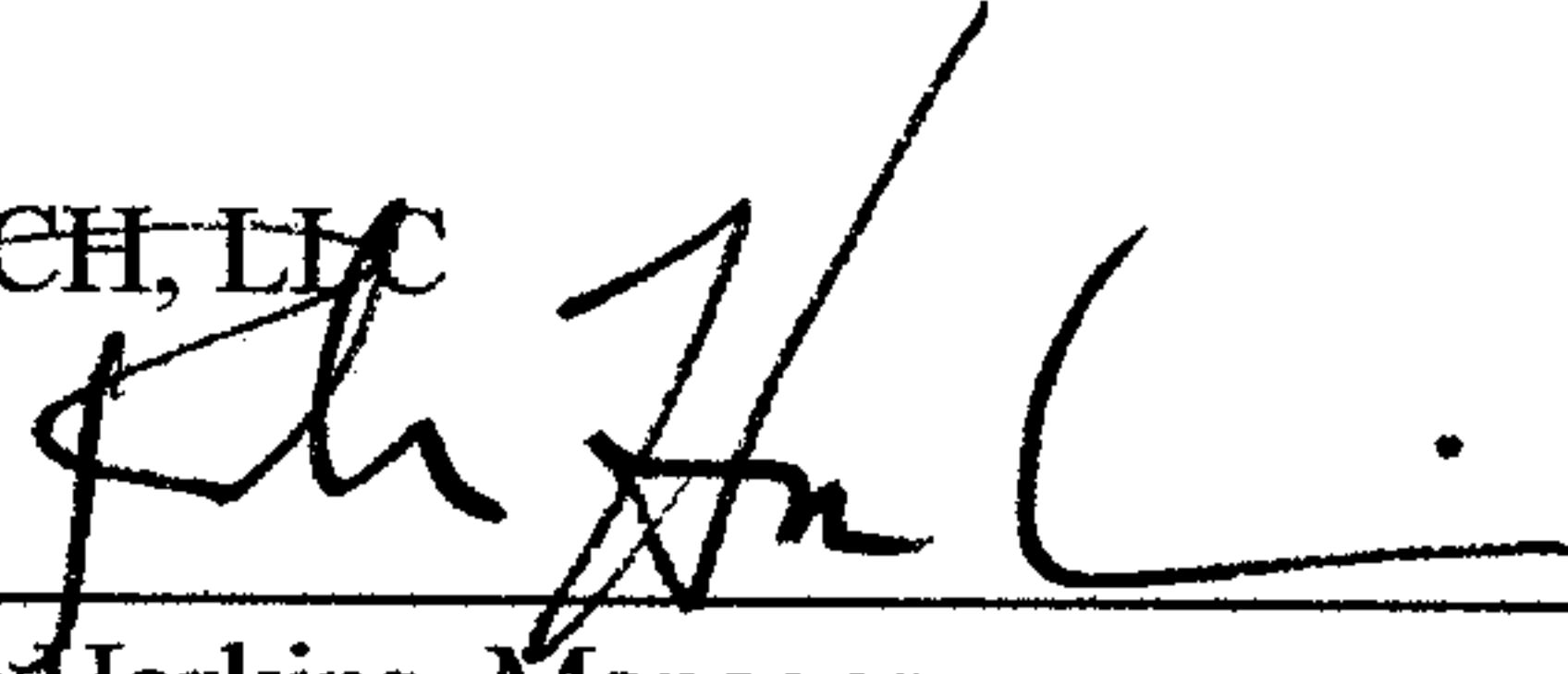
IN WITNESS WHEREOF, the officers of the Association have hereunto set their hands

and caused the corporate seal to be affixed hereto all as authorized by the Board of Directors and the manager of the limited liability company has hereunto set his hand and seal as authorized by the operating agreement of the company the date first above appearing.

The Fountains Unit Owners Association, Inc.
By: 
President

Attest: 
Secretary



By: 
TLECH, LLC
Peter Harkins, Manager

STATE OF NORTH CAROLINA, COUNTY OF Orange

I, Margaret A. Smith, Notary Public for said County and State, certify that Peter Harkins, personally came before me this day and acknowledged that he/she is Secretary of The Fountains Unit Owners Association, Inc., a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself/herself as its Secretary.

1999.

Witness my hand and official stamp\seal, this the 16 day of August,

Margaret A. Smith
Notary Public

My Commission Expires: June 10, 2001

STATE OF NORTH CAROLINA, COUNTY OF Orange

I, Margaret A. Smith, Notary Public for said County and State, certify that Peter Harkins, Manager, TLCCH, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument.

1999.

Witness my hand and official stamp\seal, this the 16 day of August,

Margaret A. Smith
Notary Public

My Commission Expires: June 10, 2001

CB Services Corporation, Trustee, Centura Bank, Robert O. Belo, Trustee, East West
Partners Management Company, Roger L. Perry and C. C. Woods Construction Company join
in this Amended and Restated Declaration of Unit Ownership for the purpose of subordinating
the liens of the deeds of trust recorded at Book 1729, Page 305, and Book 1729, Page 315,
Orange County Registry and the judgment docketed at Judgment Docket 41, Page 154 Orange
County to the terms and conditions of the Declaration.

[Signatures Appear on Subsequent Pages]



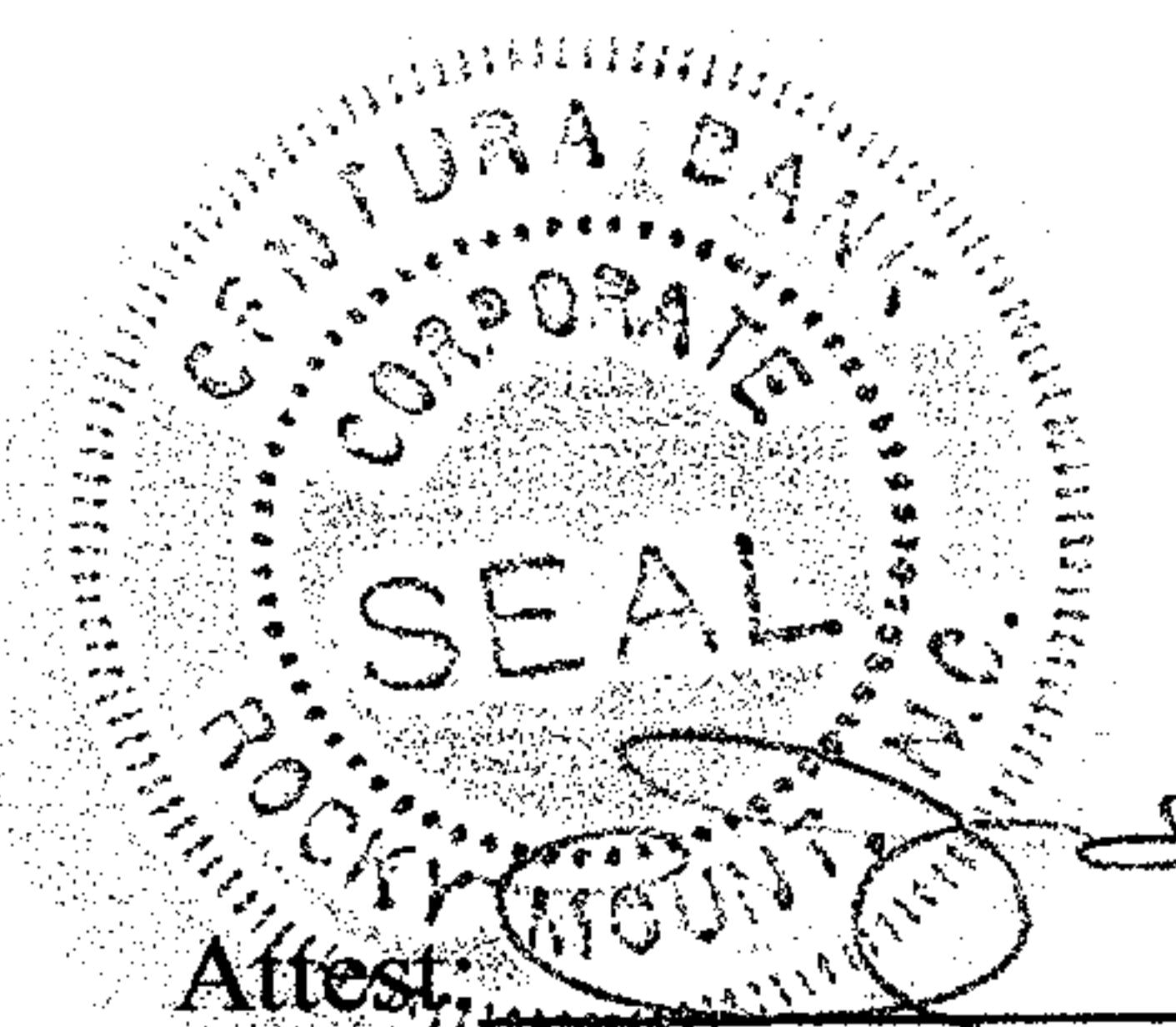
CB Services Corporation, Inc.

By:

Asst. Vice President, Dennis M. Marcin

Attest:

Asst. Secretary Niko Paliouras



Centura Bank

By:

President ~~Bank Officer~~, Chandler S. Burns
~~vice president~~

Attest:

Asst. Secretary Victoria D. O'Rourke

STATE OF NORTH CAROLINA, COUNTY OF Orange

I, Margaret A Smith, Notary Public for said County and State, certify that Niko Paliouras, personally came before me this day and acknowledged that he/she is Asst. Secretary of CB Services Corporation, a corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its Asst. Vice President, sealed with its corporate seal, and attested by himself/herself as its Secretary.

NOT Witness my hand and official stamp\seal, this the 18 day of August,
1999.

Notary Public Margaret A Smith

My Commission Expires: June 10, 2003

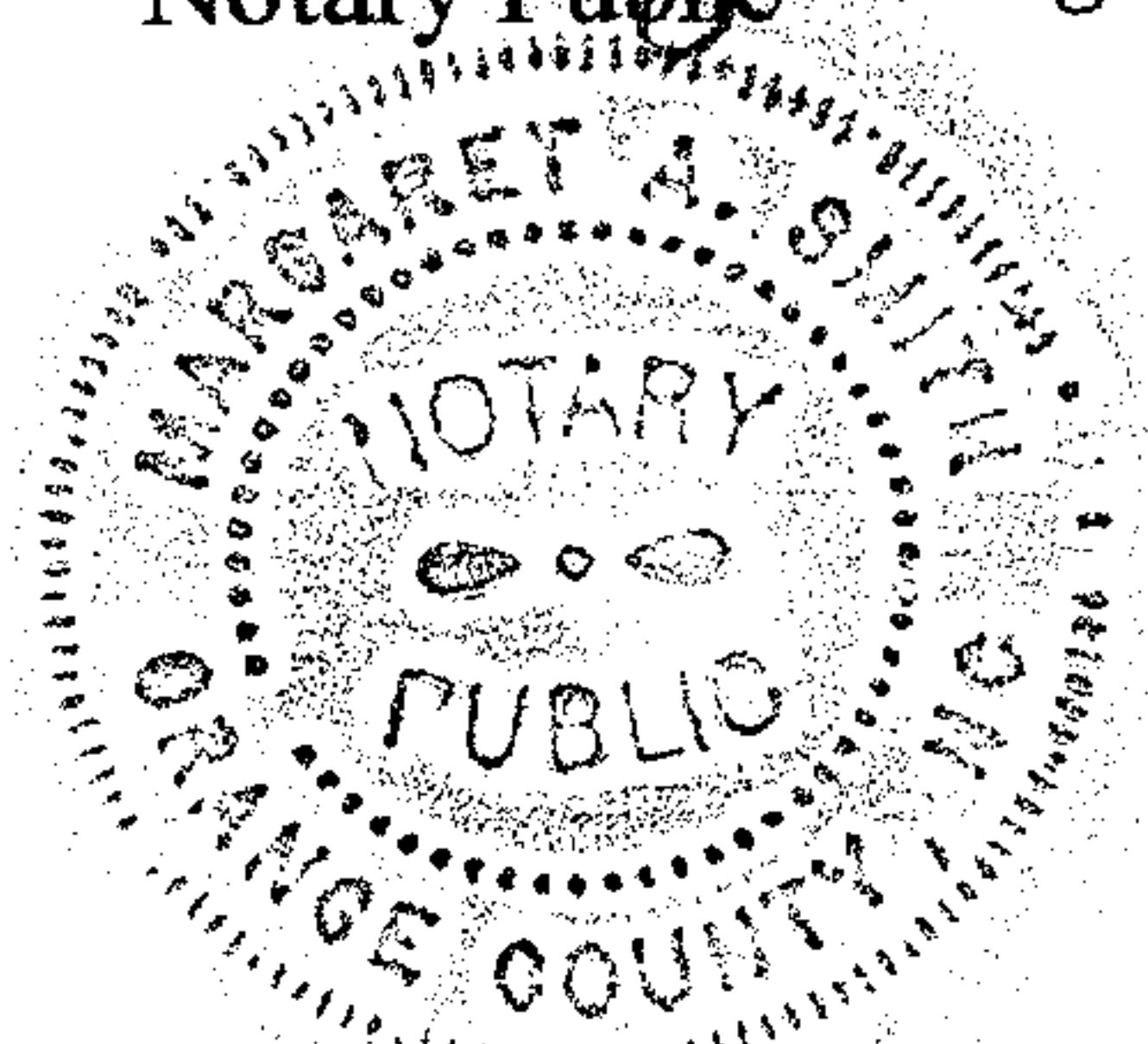
STATE OF NORTH CAROLINA, COUNTY OF Orange

I, Margaret A Smith, Notary Public for said County and State, certify that Victoria D. O' Rourke, personally came before me this day and acknowledged that he/she is Asst. Secretary of Centura Bank, 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 himself/herself as its Secretary.

Witness my hand and official stamp\seal, this the 18 day of August,
1999.

Notary Public Margaret A Smith

My Commission Expires: June 10, 2003





Robert (Seal)

Robert O. Belo, Trustee

Roger L. Perry (Seal)

East West Partners Management Company, Inc.

By: *Roger L. Perry*

President

Attest: *Robert O. Belo*

Secretary

STATE OF NORTH CAROLINA, COUNTY OF Orange

I, Mary Jo Muzzey Notary Public for said County and State, certify that Robert O. Belo, Trustee, personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp\seal, this the 20th day of August,

1999.

Mary Jo Muzzey
Notary Public

My Commission Expires: July 3, 2001

STATE OF NORTH CAROLINA, COUNTY OF Orange

I, Mary Jo Muzzey, Notary Public for said County and State, certify that Roger L. Perry personally came before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp\seal, this the 19th day of August,

1999.

Mary Jo Muzzey
Notary Public

My Commission Expires: July 3, 2001

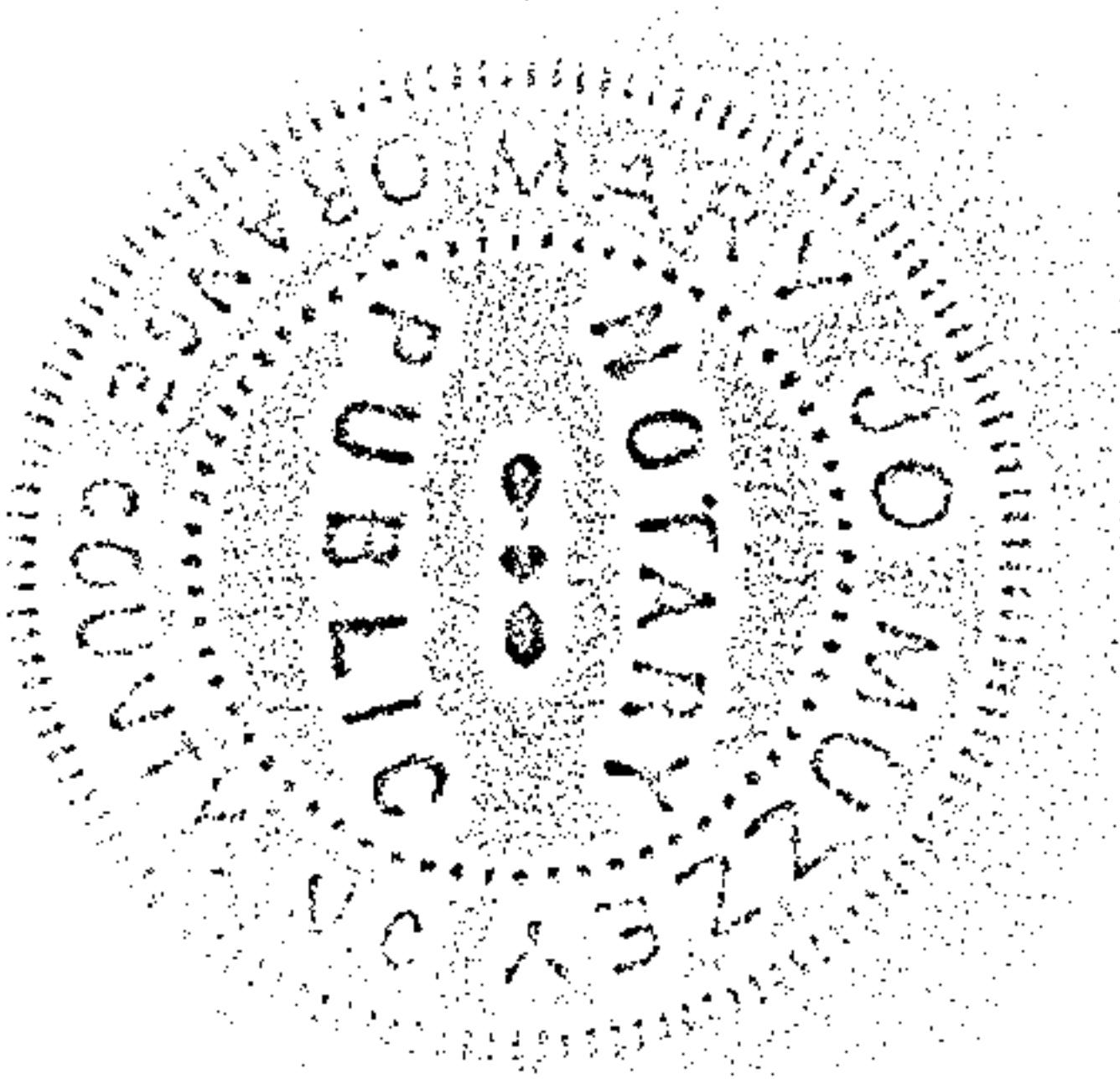
STATE OF NORTH CAROLINA, COUNTY OF Orange

I, Mary Jo Muzey, Notary Public for said County and State, certify that Dennis Rocheleau, personally came before me this day and acknowledged that he/she is Secretary of East West Partners Management Company, ^{INC}, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself/herself as its Secretary.

Witness my hand and official stamp\seal, this the 19th day of August, 1999.

Mary J. Muzey
Notary Public

My Commission Expires: July 3, 2001



C. C. Woods Construction Company
 By: Donald O'Neil
 President

Attest: Shawn J. McFarland
 Corporate Secretary

STATE OF NORTH CAROLINA, COUNTY OF Durham

I, Veronica L. Kramer, Notary Public for said County and State, certify that Donald O'Neil ^(Sheriff) personally came before me this day and acknowledged that he/ she is Corporate Secretary of C. C. Woods Construction Company, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its President, sealed with its corporate seal, and attested by himself/herself as its Secretary. Witness my hand and official stamp\seal, this the 24th day of August, 1999.

Veronica L. Kramer
 Notary Public

My Commission Expires: 04-28-01

State of North Carolina-Orange County

The foregoing certificate(s) of Margaret A. Smith
Mary Jo Muzzey & Veronica L. Kramer

A Notary (Notaries) Public for the Designated Governmental units is (are) certified to be correct. See filing certificates herein.

This the 25th day of Aug. A.D. 1999

Joyce H. Pearson
 Register of Deeds By:

Debrah B. Brooks
 Assistant / Deputy

FILED
 25 AUG 1999, at 03:20:07pm
 Book 1979, Page 285 - 346
 Joyce H. Pearson
 Register of Deeds,
 Orange County, N. C.

BOOK 1979 PAGE 310
EXHIBIT A TO DECLARATION

UNIT	SQUARE FOOTAGE	LIMITED COMMON ELEMENTS ¹	% INTEREST IN COMMON ELEMENTS
101	1,085	None	2.73
102	929	None	2.34
103	2,087	None	5.26
105A	3,310	None	8.38
105B	3,761	None	9.49
201	12,365	None	31.28
301	1,671	None	4.21
302	1,166	None	2.94
303	1,315	Terrace	3.31
304	973	None	2.45
305	1,026	Terrace	2.58
306	1,066	None	2.69
307	1,108	Terrace	2.79
308	1,030	None	2.59
401	1,699	Terrace	4.28
402	1,668	Terrace	4.21
403	1,645	Terrace	4.15
404	1,713	Terrace	4.32
TOTAL	39,617		100.00

¹ Each unit has a limited common interest in parking space(s) as shown on the plans described in Section 2 of the Declaration.

STATE OF NORTH CAROLINA



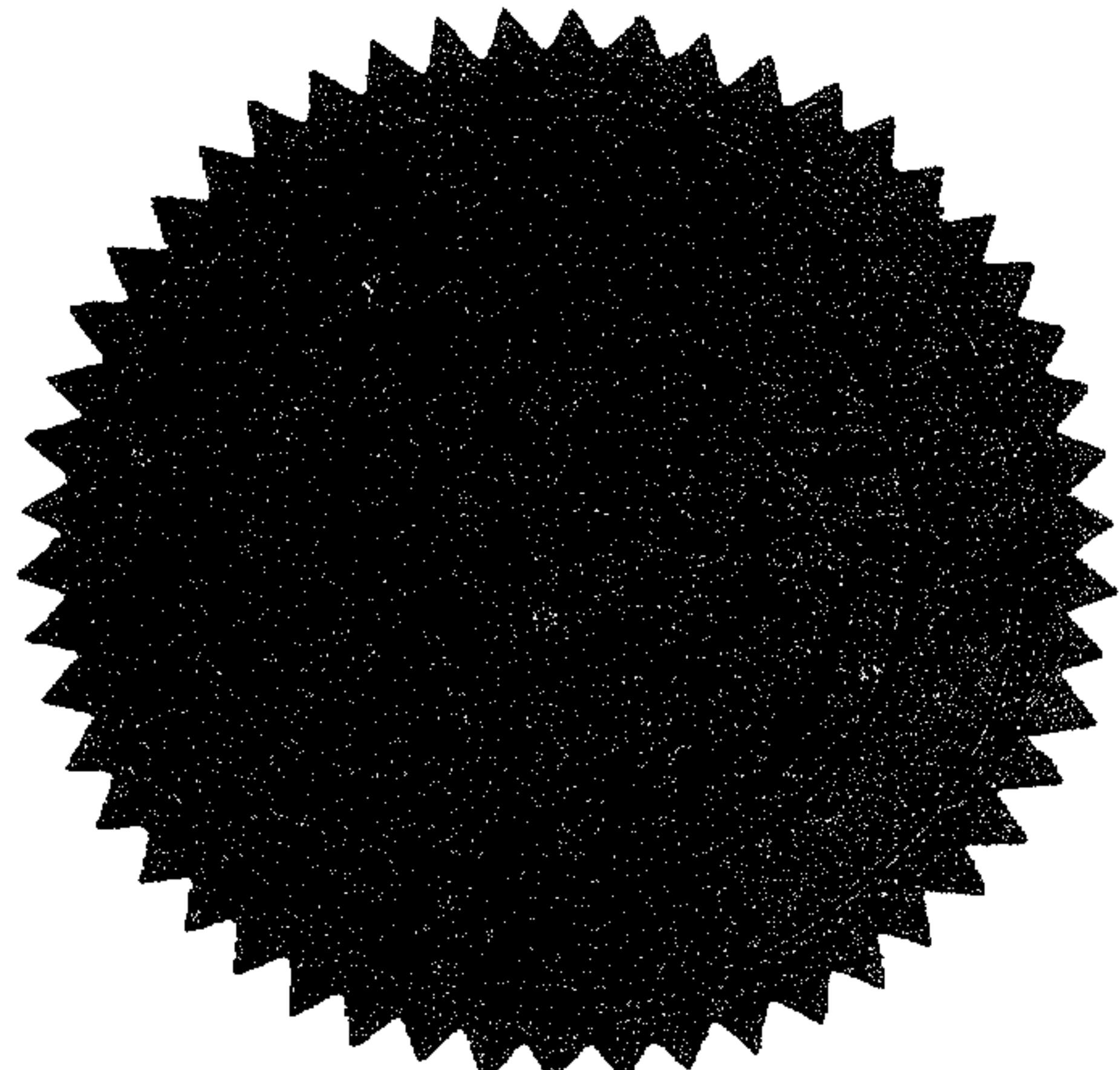
Department of The
Secretary of State

To all whom these presents shall come, Greetings:

I, ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF INCORPORATION OF THE FOUNTAINS UNIT OWNERS ASSOCIATION, INC.

the original of which was filed in this office on the 12th day of July, 1999.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 12th day of July, 1999.

Elaine F. Marshall

Secretary of State

CORP ID # 0499540

FILED
1:46 PM
JUL 12 1999

99 193 5092

ARTICLES OF INCORPORATION

OF

SECRETARY OF STATE
THE FOUNTAINS UNIT OWNERS ASSOCIATION, INC. NORTH CAROLINA

Effective
~~ELAINE F. MARSHALL~~
SECRETARY OF STATE
N.C. NORTH CAROLINA

The undersigned herewith submits these Articles of Incorporation for the purpose of forming a non-profit corporation under the laws of the State of North Carolina.

1. The name of the corporation is: The Fountains Unit Owners Association, Inc.
2. The corporation is a charitable or religious corporation within the meaning of N.C. Gen. Stat. § 55A-1-40(4) in that it is organized for the purpose of operating a non-profit condominium owners association.

214 W. Rosemary Street
Chapel Hill, Orange County, North Carolina

The name of the initial registered agent at such address is: Josh Gurlitz

4. The name and address of the incorporator is:

Josh Gurlitz
214 West Rosemary Street
Chapel Hill, Orange County, North Carolina 27516
5. The corporation will have members with such designations, rights, powers and privileges as provided by the bylaws.
6. No part of the net earnings of the corporation shall inure to the benefit of any officer, director or member of the corporation; and upon dissolution of the corporation, the assets of the corporation shall, after all of its liabilities and obligations have been discharged or adequate provision made therefore, be distributed to a charitable or religious corporation that is exempt under § 501(c)(3) of the Internal Revenue Code of 1986 or any successor section which is organized for purposes similar to those set out in section 2 above.
7. The number of directors constituting the initial Board of Directors shall be two and the names and addresses of the person who are to serve as the initial directors are:

Name BOOK 1979 PAGE 313

Address

Josh Gurlitz

214 West Rosemary Street
Chapel Hill, N.C. 27516

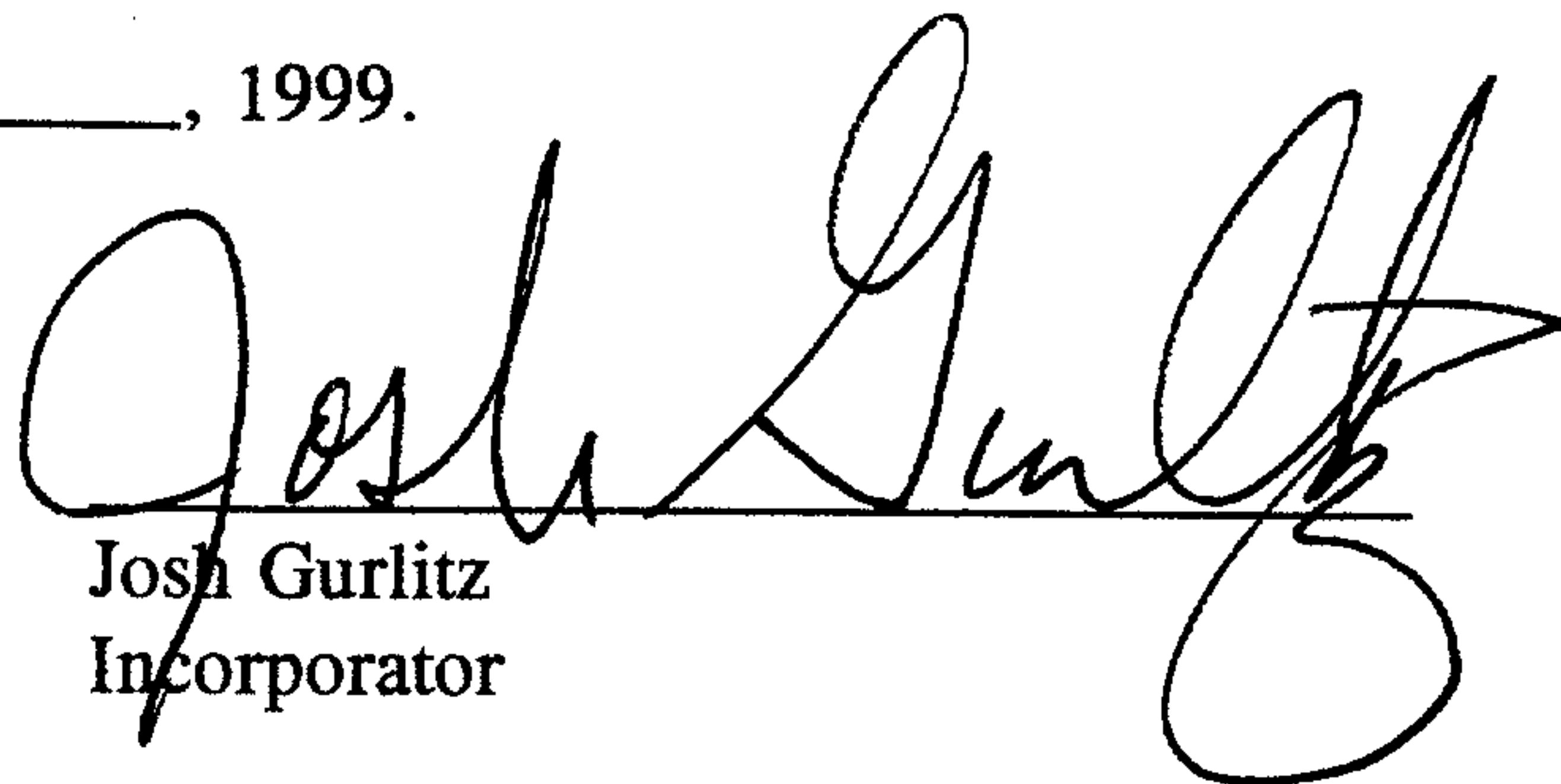
Jeffrey R. Boak.

214 West Rosemary Street
Chapel Hill, N.C. 27516

8. To the fullest extent permitted by the North Carolina Non-Profit Corporation Act as it exists or may hereafter be amended, no person who is serving or who has served as a director of the corporation shall be personally liable for monetary damages for breach of any duty as a director. No amendment or repeal of this article nor the adoption of any other amendment to these articles of incorporation inconsistent with this article, shall eliminate or reduce the protection granted herein with respect to any matter that occurred prior to such amendment, repeal or adoption.

7. These articles shall be effective upon filing.

This the 8th day of July, 1999.



A handwritten signature in black ink, appearing to read "Josh Gurlitz".

Josh Gurlitz
Incorporator

Prepared By & Return To: John A. Northen; Northen, Blue Law Firm
Post Office Box 2208, Chapel Hill, NC
27515-2208

Exhibit to:
Declaration of Condominium

BYLAWS OF
THE FOUNTAINS UNIT OWNERS ASSOCIATION, INC.
CHAPEL HILL, NORTH CAROLINA

ARTICLE I - PLAN OF UNIT OWNERSHIP

1. Unit Ownership: The Property described in the Declaration to which these Bylaws are attached, has been submitted to the provisions of Chapter 47C of the North Carolina General Statutes entitled "North Carolina Condominium Act" by the Declaration recorded in the Office of the Register of Deeds for each County in which said Property is located, simultaneously herewith, and such Property shall hereinafter be known as The Fountains.

2. Applicability of Bylaws: The provisions of these Bylaws are applicable to the Property of The Fountains, as described in said Declaration and any additional real estate added thereto and made subject to the Declaration, and to the use and occupancy thereof. The term "Property" as used herein shall include the land, the buildings and all other improvements thereon, including the units and the common elements owned in fee simple absolute, and all easements, rights and appurtenances belonging thereto, and all other property, personal or mixed, intended for use in connection therewith, all of which are submitted to the provisions of said

Chapter 47C of the North Carolina General Statutes, entitled "North Carolina Condominium Act."

3. Application: All present and future owners, mortgagees, lessees and occupants of Units and their employees, agents, guests and any other persons who may use the facilities of the Property in any manner are subject to the Declaration, these Bylaws and the Rules and Regulations made pursuant hereto and any amendment to these Bylaws upon the same being passed and duly set forth in an Amendment to the Bylaws duly recorded.

The acceptance of a deed of conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that these Bylaws and any Rules and Regulations made pursuant hereto and the provisions of the Declaration, as they may be amended from time to time, will be complied with and are accepted and ratified.

ARTICLE II - ASSOCIATION OF UNIT OWNERS

1. Composition and Powers: The Association of Unit Owners shall be composed of all the unit owners of the project, including West End Partners Limited Partnership (hereinafter referred to as Declarant) so long as the Declarant retains ownership of one or more of the project units. The Association shall have all of the powers with respect to the operation and regulation of the condominium project conferred upon the Association or which may be conferred upon the Association by or pursuant to a) the provisions of Chapter 47C of the General Statutes of North Carolina, being the

North Carolina Condominium Act and b) the Declaration of Unit Ownership for The Fountains filed of record in the Office of the Register of Deeds for each County in which the Property is located, to which Declaration these Bylaws are appended. Except as otherwise provided for herein allowing for the exclusive control by Declarant of the acts, decisions and resolutions of the Association until such time as three-fourths (3/4) of the units have been sold or until two (2) years from and after all Declarants have ceased to offer units for sale in the ordinary course of business or two (2) years after any development right to add new units was last exercised, whichever event comes first, the acts, decisions, and resolutions of the Association shall be effective upon adoption by majority vote of the unit owners as defined by Chapter 47C of the General Statutes of North Carolina, such majority vote being the votes of the owners of more than fifty percent (50%) of the aggregate interest in the common elements and facilities as established by the Declaration, assembled at a duly called meeting of the unit owners.

2. Present Existence of Association of Unit Owners: The Association of Unit Owners, referred to hereinafter as either the "Association" or "Unit Owners", shall be in and have an existence from and after the filing of record by Declarants of the Declaration for The Fountains, to which Declaration these Bylaws are appended. Declarant shall hold an initial meeting of the Association at any time at its election within thirty (30) days from and after the date of the filing of the Declaration for the

purpose of designating an initial Board of Directors and for the purpose of transacting all other matters required for the organization of the Association. In the event that there is a unit owner or owners other than Declarant at the time of the holding of such initial meeting of the Association, such meeting shall be held upon ten (10) days' written notice given by Declarant to such other unit owner or owners.

3. Annual Meetings: An annual meeting of the Unit Owners shall be held at 8:00 o'clock p.m., on the first Tuesday of November of each year, if not a legal holiday, and if a legal holiday, then at the same time on the next day following not a legal holiday, for the purpose of electing members of the Board of Directors (except as initially limited by the terms and provisions of Article III, Section 2, hereinafter appearing) and for transacting such other business as may be properly brought before the meeting.

4. Substitute Annual Meetings: If the annual meeting shall not be held on the day designated by these Bylaws, a substitute annual meeting may be called in accordance with the provisions of Section 5 of this Article. A meeting so called shall be designated and treated for all purposes as an annual meeting.

5. Special Meetings: Special meetings of the Unit Owners may be called at any time by the Board of Directors or upon the written request of unit owners owning not less than twenty percent (20%) of the aggregate interest in the common areas and facilities.

6. Notice of Meetings: Written notice stating the place, day and hour of the meeting shall be delivered or mailed not less than ten (10) nor more than fifty (50) days before the stated date of such meeting, either personally or by mail at the direction of the Board of Directors or Unit Owners calling the meeting, to each person entitled to vote at such meeting.

In the case of an annual or substitute annual meeting, the notice of meeting need not specifically state the business to be transacted thereat unless it is a matter other than the election of Directors on which the vote of Unit Owners is expressly required by the provisions of the North Carolina Condominium Act. In the case of a special meeting the notice of meeting shall specifically state the purposes for which the meeting is called.

When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. When a meeting is adjourned for less than thirty (30) days, it is not necessary to give any notice of the adjourned meeting other than by announcement at the meeting at which the adjournment is effective.

7. Quorum: The presence in person or by proxy at any meeting of the voting members as defined in Section 8 of this Article having a twenty percent (20%) of the total votes (which may be cast for election of directors) shall constitute a quorum. Unless otherwise expressly provided for herein or in the Declaration or bylaw, any action may be taken at any meeting of the Unit Owners at which a quorum is present upon the affirmative vote of the

voting members having a majority of the total votes present at such meeting. If there is no quorum at the opening of the meeting of Unit Owners, such meeting may be adjourned from time to time by the vote of a majority of the voting members present, either in person or by proxy, and at any adjourned meeting at which a quorum is present any business may be transacted which might have been transacted at the original meeting.

The voting members at a meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough voting members to leave less than a quorum.

8. Voting Rights: There shall be one person or entity with respect to each unit who or which shall be entitled to vote at any meeting of the Unit Owners. Such person or entity shall be known and hereafter referred to as a "voting member." Such voting member may be the owner or one of the group comprising all of the owners of a unit, or may be some other person (who need not be an owner) designated by such owner or owners to act as proxy on his, her, its, or their behalf. Such designation shall be made in writing to the Board of Directors and shall be revocable at any time by actual notice to the Board of Directors of the death or judicially declared incompetence of any designator, or by written notice to the Board of Directors by the owner or owners. The total number of votes of all voting members shall be one hundred (100), and each owner or group of owners (including Declarant and/or the Board of Directors, if Declarant and/or the Board of Directors shall then hold title to one or more units) shall be entitled to the number

of votes equal to the total of the percentage of ownership in the common elements and facilities applicable to his, her, its, or their unit ownership as set forth in the Declaration.

9. Cumulative Voting: In all elections for members of the Board of Directors, such voting member shall be entitled to vote on a cumulative voting basis and the candidates receiving the highest number of votes with respect to the number of offices to be filled shall be deemed to be elected.

10. Waiver of Notice: Any Unit Owner at any time may waive notice of any meeting of the Unit Owners in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Unit Owner at any meeting of the Unit Owners shall constitute a waiver of notice by him of the time and place thereof except where a Unit Owner attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the Unit Owners are present at any meeting of the Unit Owners, no notice shall be required and any business may be transacted at such meeting.

11. Informal Action by Unit Owners: Any action which may be taken at a meeting of the Unit Owners may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association Minute Book.

ARTICLE III - BOARD OF DIRECTORS

1. General Powers: The business and property of the Condominium shall be managed and directed by the Board of Directors or by such Executive Committee as the Board may establish pursuant to these Bylaws.

2. Number, Term and Qualifications: The initial Board of Directors of the Association shall be initially comprised of three (3) Directors to be designated by Declarants at the initial meeting of the Association as referred to in Article II hereinabove set forth. The initial Board of Directors so designated by Declarant shall serve until such time as units representing seventy-five percent (75%) of the common elements have been sold by Declarant or until two (2) years from and after all Declarants have ceased to offer units for sale in the ordinary course of business or two (2) years after any development right to add new units was last exercised, whichever event comes first, and the initial Board of Directors so designated by Declarant shall not be subject to change as to composition or size by any vote of the Association during such period of time. Not later than sixty (60) days after units representing twenty-five percent (25%) of the common elements have been sold and conveyed by Declarant at a time prior to the expiration of the initial period set forth above, at least one member and not less than twenty-five percent (25%) of the members of the Board of Directors shall be elected by unit owners rather than Declarant, and the Board shall be increased to four (4) Directors. Not later than sixty (60) days after units representing

fifty percent (50%) of the common elements have been sold and conveyed by Declarant at a time prior to the expiration of the initial period set forth above, not less than thirty-three percent (33%) of the members of the Board of Directors shall be elected by unit owners rather than Declarant, and the Board shall be increased to six (6) Directors. Upon the termination of the initial period set forth above, the unit owners shall select a Board of Directors, at least a majority of whom must be unit owners.

The size of the Board of Directors thereafter may be increased or decreased from time to time upon the affirmative vote of the unit owners owning sixty-seven percent (67%) of the aggregate interest in the common areas and facilities, provided that said Board shall not be less than three (3) in number. Each Director shall hold office for a period of one year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualified. A majority of the members of the Board shall be unit owners or co-owners or a spouse of a unit owner or co-owner; provided, however, that in the event an owner or co-owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then any officer or director of such corporation, partner of such partnership, trustee or beneficiary of such trust or manager of such legal entity shall be eligible to serve as a member of the Board.

3. Election of Directors: Except as provided in Section 4 of this Article, the Directors shall be elected at the annual

meeting of Unit Owners, and those persons who receive the highest number of votes shall be deemed to have been elected.

4. Vacancies: A vacancy occurring in the Board of Directors, including directorships not filled by the Unit Owners, may be filled by a majority of the remaining Directors, though less than a quorum, or by the sole remaining Director; but a vacancy created by an increase in the authorized number of Directors shall be filled only by election at an annual meeting or a special meeting of Unit Owners called for that purpose. Voting members may elect a Director at any time to fill any vacancy not filled by the Directors.

5. Compensation: The Board of Directors shall receive no compensation for their services unless allowed and provided for by a resolution of the Unit Owners passed by the affirmative vote of the Unit Owners owning sixty-seven percent (67%) of the aggregate interest in the common areas and facilities.

6. Executive Committees: The Board of Directors may, by resolution adopted by a majority of the number of Directors fixed by these Bylaws, designate three or more Directors to constitute an Executive Committee, which committee to the extent provided for in such resolution shall have and may exercise all of the authority of the Board of Directors in the management of the Condominium.

7. Powers and Duties: The Board of Directors shall have the powers and duties necessary for the administration of the affairs of the Condominium and may do all such acts and things except such acts as by law or by the Declaration or by these Bylaws may not be

delegated to the Board of Directors. Such powers and duties of the Board of Directors shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep and maintenance of the common elements and facilities, including the exteriors of the several buildings.
- (b) Determination of the common expenses required for the affairs of the Condominium, including without limitation, the operations and maintenance of the Property.
- (c) Collection of the common charges from the Unit Owners.
- (d) Employment and dismissal of the personnel necessary for the maintenance and operation of the common elements and facilities.
- (e) At the direction of the Unit Owners declared by the affirmative vote of Unit Owners owning sixty-seven percent (67%) of the aggregate interest in the common elements and facilities, the adoption and amendment of such reasonable Rules and Regulations as may be deemed necessary for the use, enjoyment, care, conservation and beautification of the Property and for the health, comfort, safety and general welfare of the Unit Owners and the occupants of the Property. Written notice of such Rules and Regulations shall be given to all Unit Owners and occupants and the entire Property shall at all times be maintained subject to such Rules and Regulations. Declarant as Owner of one hundred percent (100%) of the aggregate interest in the common elements and facilities as of the time of the filing of the Declaration to which

these Bylaws are appended, may promulgate and issue an initial set of Rules and Regulations, which from and after such promulgation shall be and continue in force and effect until such time as they may be amended by the Board of Directors as herein provided. A copy of such initial Rules and Regulations shall be furnished by Declarant to each Unit Owner at the time of such owner acquiring from Declarant his, her or its ownership interest in the unit.

(f) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.

(g) Maintaining and repairing any unit (in addition to the exteriors of the several buildings) if such maintenance or repair is necessary in the opinion of the Board of Directors or by operation of applicable restrictions or ordinance or regulation to protect the common elements and facilities or any other portion of any building and the owner of such unit or limited common element in disrepair has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered or mailed by the Board of Directors to said owner, provided that the Board of Directors shall levy a special assessment against such owner for the costs of said maintenance or repair.

(h) Entering any unit when necessary in connection with any maintenance or repair or construction for which the Board of Directors is responsible; provided, however, that such entry shall be made during reasonable hours with as little inconvenience to the occupant as practicable, and any damage caused thereby shall be

repaired by the Board of Directors and such expense shall be treated as a common expense.

(i) Signing all agreements, contracts, deeds, vouchers for payment of expenditures and other instruments in such manner as from time to time shall be determined to be necessary as evidenced by written resolution of the Board of Directors.

(j) Applying for and obtaining the issuance of contracts of insurance for the Property, including the individual units, pursuant to the provisions of the Declaration.

(k) Making repairs, additions and improvements to or alterations of the Property and repairs as to and restoration of the Property in accordance with the other provisions of these Bylaws and the Declaration after damage or destruction by fire or other casualty or as a result of condemnation or eminent domain proceedings.

(l) Maintaining, repairing, and replacing as needed and from time to time such recreational improvements or areas, enhancements, shrubbery, trees, screens, buffers, or other improvements or facilities as may be required for the Condominium to be and remain in compliance with the permits, licenses, or other approvals issued or required by the Town of Chapel Hill or other governmental authorities.

8. **Managing Agent:** The Board of Directors may engage the services of any person, firm or corporation to act as managing agent at a compensation established by the Board of Directors to

perform such duties and services as the Board of Directors shall authorize.

ARTICLE IV - MEETINGS OF DIRECTORS

1. Organizational Meeting: The first meeting of the members of the Board of Directors shall immediately follow the initial meeting of the Unit Owners. It shall not be necessary for notice to be given to the three (3) initial members of the Board of Directors designated by Declarant to serve in order to legally constitute such meeting, providing a quorum shall be present.

2. Regular Meetings: A regular meeting of the Board of Directors shall be held immediately after and at the same place as the annual meeting or substitute annual meeting of the Unit Owners. In addition, the Board of Directors may designate by resolution the time and place within the State of North Carolina for the holding of a regular meeting of the Board of Directors.

3. Special Meetings: Special meetings of the Board of Directors may be called by or at the request of the President, a majority of the Board of Directors, or by unit owners having twenty percent (20%) of the votes in the Association.

4. Notice of Meetings: Not less than ten (10) nor more than fifty (50) days in advance of any meeting, the Secretary shall cause notice to be hand-delivered or sent pre-paid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. Such notice must specify the time and place of the meeting and the items on the

agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer. Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting except where a Director attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called.

5. Waiver of Notice: Any member of the Board of Directors at any time may waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at any meeting of the Board of Directors shall constitute a waiver of notice by him of the time and place thereof. If all the members of the Board of Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

6. Quorum: A majority of the number of directors fixed by these Bylaws as amended from time to time shall be required for and shall constitute a quorum for the transaction of business at any meeting of the Board of Directors.

7. Manner of Action: Except as otherwise provided for in this section, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board of Directors. A vote of a majority of the number of Directors fixed by the Bylaws shall be required to adopt a

resolution constituting an Executive Committee. Vacancies in the Board of Directors may be filled as provided in these Bylaws.

8. Organization: Each meeting of the Board of Directors shall be presided over by the President as Chairman of the Board, and in the absence of the President, by any person selected to preside by vote of the majority of the Directors present. The Secretary, or in his absence, the Assistant Secretary, or in the absence of both the Secretary and the Assistant Secretary, any person designated by the Chairman of the meeting, shall act as Secretary of the meeting.

9. Informal Action of Directors: Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the Directors and filed with the Minutes of the proceedings of the Board, whether done before or after the action so taken.

10. Minutes: The Board of Directors shall keep written minutes of its proceedings.

11. Fidelity Bonds: The Board of Directors may require all officers and employees of the Association handling or responsible for Association funds to be covered by an adequate fidelity bond. The premiums on such bonds shall constitute a common expense.

12. Liability of the Board of Directors: The members of the Board of Directors shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each of the members of the Board of

Directors against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association except to the extent they are Unit Owners. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board of Directors or out of the aforesaid liability in favor of the members of the Board of Directors shall be limited to such proportion of the total liability thereunder as his interest in the common elements and facilities bears to the interests of all the Unit Owners in the common elements and facilities. Every contract made by the Board of Directors or by the managing agent on behalf of the Association shall provide that the members of the Board of Directors, or the managing agent, as the case may be, are acting only as agents for the Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the common elements and facilities bears to the interest of all Unit Owners in the common elements and facilities.

ARTICLE V - OFFICERS

1. Number: The principal officers of the Association shall consist of a President, a Secretary, a Treasurer, and such Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Board of Directors may from time to time elect. Any two or more offices may be held by the same person except the offices of President and Secretary. The Treasurer of the Association may retain the services of a bookkeeper or he may act himself as bookkeeper for the Association at a compensation determined by the Board of Directors as evidenced by written resolution of the Board of Directors.

2. Election and Term: The officers of the Association shall be elected by the Board of Directors from and among the Unit Owners. It is not required that an officer, other than the President, be a Director. Such elections may be held at the regular meeting of the Board of Directors. Each officer shall hold office for a period of one year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

3. Removal: Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors with or without cause; but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

4. Compensation: No officer shall receive any compensation from the Association for acting as such, except for the Treasurer

in the event of the approval of same by the Board of Directors as provided for in Item 1 hereinabove.

5. **President:** The President shall be the Chairman of the Board and principal executive officer of the Association and, subject to the control of the Board of Directors, shall supervise and control the management of the Condominium. The President, when present, shall preside at all meetings of the Board of Directors and of the Unit Owners and, in general, shall perform all duties incident to the office of President and such other duties as may be prescribed from time to time by the Board of Directors.

6. **Vice President:** In the absence or disability of the President, the Vice President, and if there be more than one, the Vice President designated by the Board of Directors, shall have the powers and perform the duties of said office. In addition, each Vice President shall perform such other duties and shall have such other powers as shall be prescribed by the President or by the Board of Directors.

7. **Secretary:** The Secretary shall keep accurate records of the acts and proceedings of all meetings of Unit Owners and Directors. He shall give, or cause to be given, all notices required by law and by these Bylaws. He shall have general charge of the Minute Books and records of both the Unit Owners and the Board of Directors. He shall sign such instruments as may require his signature, and, in general, shall perform all duties incident to the office of Secretary and such other duties as may be assigned

him from time to time by the President or by the Board of Directors.

8. Treasurer: The Treasurer shall have custody of all Association funds and securities and shall receive, deposit or disburse the same under the direction of the Board of Directors. He shall keep full and accurate records of the finances of the Association in books especially provided for that purpose. He shall cause to be prepared and distributed to all Unit Owners and members of the Board of Directors on or before the last day of the third month following the close of each fiscal year a true statement of the assets and liabilities of the Association as of the close of each fiscal year, and of the results of its operations and of changes in surplus for such a fiscal year, all in reasonable detail. The statements so prepared shall be kept available for inspection by any Unit Owner for a period of three (3) years. The Treasurer shall also prepare and file all reports and returns required by Federal, State or local law and shall generally perform all other duties as may be assigned to him from time to time by the President or by the Board of Directors.

9. Assistant Secretaries and Treasurers: The Assistant Secretaries and Assistant Treasurers, if any, shall have all the powers and perform all of the duties of the offices of Secretary and Treasurer respectively, and in general shall perform such other duties as shall be assigned to them by the Secretary or the Treasurer respectively or by the President or by the Board of Directors.

ARTICLE VI - OPERATION OF THE PROPERTY

1. Determination of Common Expenses and Fixing of Common

Charges: The Board of Directors shall from time to time, and at least annually, prepare a budget for the Association, determine the amount of the common charges payable by the Unit Owners to meet the common expenses of the Condominium, and allocate and assess such common charges among the Unit Owners according to their respective interests in the common areas and facilities; provided however, the Board may assess retail/office units in a uniform manner and residential units in a uniform manner within each group, but may assess each group differently with respect to the degree and amount of services or other common expenses reasonably associated therewith, as determined in the sole discretion of the Board. The common expenses shall include, among other things:

- (a) Costs of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board of Directors, including specifically but not limited to (1) fire and extended casualty coverage insuring the building(s) comprising the Condominium, though not the contents of the individual units located therein, and (2) liability insurance relative to the use, operation and occupancy of the Condominium.
- (b) Water and sewer charges, unless and to the extent the units are separately metered.
- (c) Expenses incurred in the maintenance of the grounds and the maintenance and/or replacement of the parking lots, roadways, recreational facilities, building exteriors, and utility lines.

- (d) Common element electric and lighting costs.
- (e) All other reasonable expenses and costs which may be incurred incident to the use and occupancy of the common elements of the Condominium, and which may be incurred incident to the operation of the Condominium.

The common expenses may also include such amounts as the Board of Directors may deem proper for working capital of the Association, for a general operating reserve, for a reserve fund for replacements, and to make up any deficit in the common expenses for any prior year. The Board of Directors shall advise all Unit Owners within 30 days after adoption of any proposed budget as determined by the Board of Directors, shall mail copies of each budget on which such common charges are based to all Unit Owners and also to their mortgagees, if so requested, and shall set a date for meeting of the Unit Owners to consider ratification of the budget not less than 14 nor more than 30 days after such mailing. The budget is ratified unless at such meeting a majority of all the Unit Owners rejects the budget, in which event the periodic budget last ratified shall be continued until a subsequent budget is ratified.

2. Special Assessments for Capital Improvements: In addition to the common charges authorized above, the Board of Directors, by and with the assent of Unit Owners owning in excess of fifty percent (50%) of the aggregate interest in the common elements and facilities, may levy in any year a special assessment applicable to that year only, for the purpose of defraying, in whole or in

part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement situate upon or relating to the common elements including the necessary fixtures and personal property related thereto. Any action authorized under this Section 2 shall be taken at a meeting called for that purpose, written notice of which shall be sent to all Unit Owners not less than ten (10) days nor more than thirty (30) days in advance of the meeting. If the proposed action is favored by a majority of the votes cast at such meeting, but such vote is less than the requisite majority of the vote of all Unit Owners, Unit Owners who were not present in person or by proxy may give their assent in writing, provided the same is given and obtained not later than thirty (30) days from the date of such meeting.

3. Payment of Common Charges and Special Assessments: All Unit Owners shall be obligated to pay the common charges assessed by the Board of Directors pursuant to the provisions of Section 1 of this Article VI on the first day of each month and shall be obligated to pay the special assessments at such time or times as the Board of Directors may determine.

No Unit Owner shall be liable for the payment of any part of the common charges or special assessments assessed against his unit subsequent to a sale, transfer or other conveyance by him of such unit together with his interest in the common elements and facilities as defined in the Declaration. A purchaser of a unit shall be jointly and severally liable with the seller for the payment of common charges and special assessments assessed against

such unit prior to the acquisition by the purchaser of such unit without prejudice to the purchaser's right to recover from the seller the amounts paid by the purchaser therefore.

Notwithstanding the provisions set forth hereinabove, a mortgagee or other purchaser of a unit at a foreclosure sale of such unit shall not be liable for and such unit shall not be subject to a lien for the payment of common charges and special assessments assessed prior to the foreclosure sale. Such unpaid common charges and special assessments shall be deemed to be common charges and special assessments collectible from all of the Unit Owners including such purchaser, his successors and assigns.

4. Creation of Lien and Personal Obligation for Common Charges and Special Assessments: Each Unit Owner by his acceptance of a deed or instrument of conveyance for a unit located therein, whether or not it shall be so expressed in any such deed or instrument of conveyance, is deemed to covenant and agree to pay to the Association: (1) all common charges assessed and (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinabove provided. Such common charges and special assessments, together with interest thereon after default and costs of collection thereof, including reasonable attorneys' fees, shall be a charge on the unit in question and shall be a continuing lien upon the property against which each such common charge or special assessment is made. Each such common charge or special assessment, together with interest, costs, and reasonable attorneys' fees,

shall also be the personal obligation of the person or persons or entity who or which was the owner of such property at the time when the common charge or special assessment became due and owing.

5. Effect of Nonpayment of Common Charges and Special Assessments; Remedies of the Association: Any common charge or special assessment which is not paid when due shall be delinquent. If the common charge or special assessment is not paid within thirty (30) days after the due date, such common charge or special assessment shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and the Board of Directors may bring an action at law for recovery of such against the Unit Owner personally obligated to pay the same, or foreclose the lien against the property, and interest, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such common charge or special assessment. No Unit Owner may waive or otherwise avoid liability for the common charge or special assessment provided for herein by non-use of the common elements or abandonment of the unit. In any action brought by the Board of Directors to foreclose on a unit because of unpaid common charges or special assessments, the Unit Owner shall be required to pay a reasonable rental for the use of his unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The Board of Directors, acting on behalf of all Unit Owners, or on behalf of any one or more individual Unit Owners if so instructed, shall have the power to purchase such unit at the foreclosure sale and to acquire, hold,

lease, mortgage, and convey or otherwise deal with the same, subject however, to applicable restrictions of record and the provisions of the Declaration. A suit to recover a money judgment for unpaid common charges or special assessments may be maintained without foreclosing or waiving the lien securing the same. In addition to the remedies hereinabove provided, the Board of Directors shall have the right to suspend the privilege of the defaulting Unit Owner to use and enjoy any of the common facilities (other than for purposes of ingress and regress) for such period of time as the default shall continue.

6. **Statement of Common Charges:** The Board of Directors shall promptly provide any Unit Owner so requesting a written statement of all unpaid common charges and special assessments due from such Unit Owner.

7. **Abatement and Enjoinment of Violations by Unit Owners:** The violation of any Rule or Regulation adopted by the Board of Directors or the breach of any Bylaw contained herein or the breach of any provision of the Declaration shall give to the Board of Directors in addition to the other rights set forth in these Bylaws: (a) the right to enter the unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board thereby shall not be deemed guilty in any manner of trespass or conversion; (b) the right to enjoin, abate or remedy by appropriate legal proceedings,

either at law or in equity, the continuance of any breach, and (c) the right to provide a hearing before an adjudicatory panel created by the Board to determine if a unit owner should be fined (not to exceed \$150.00) for a violation of the Declaration, Bylaws, or Rules and Regulations of the Association, as provided in General Statutes Section 47C-3-107A.

8. Maintenance and Repair: (a) All maintenance and repairs to any unit, structural or non-structural (including window glass and doors), ordinary or extraordinary (other than maintenance of and repairs to any common elements and facilities contained therein and not necessitated by the negligence, misuse or neglect of the owner of such unit), shall be made by the owner of such unit. Each Unit Owner shall be responsible for all damages resulting to other units and/or to the common elements and facilities which are occasioned by the negligence, misuse or neglect of such Unit Owner.

(b) All maintenance, repairs and replacements to the common elements and facilities, whether located inside or outside of the units (unless necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner), shall be made by the Board of Directors and shall be charged to all the Unit Owners as a common expense.

(c) All maintenance, repairs and replacements to a limited common element (unless necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner), shall be made by the Board of Directors and shall

be charged to the units to which that limited common element is assigned, equally.

9. Additions, Alterations and Improvements by Unit Owners:

No Unit Owner shall make any interior structural addition, alteration or improvement or any exterior structural addition, alteration or improvement not affecting appearance in or to his unit without the prior written consent thereto given by the Board of Directors. The Board of Directors shall have the obligation to answer any written request by a Unit Owner for approval of a proposed addition, alteration or improvement in or to such Unit Owner's unit and within the categories set forth hereinabove within thirty (30) days after such request, and failure to do so within the stipulated time will constitute a consent by the Board of Directors to the proposed addition, alteration or improvement. No Unit Owner shall make any exterior structural addition, alteration or improvement affecting appearance in or to his unit without the prior written consent of the Unit Owners as determined by the affirmative vote of the Unit Owners owning sixty-seven percent (67%) of the aggregate interest in the common elements and facilities.

10. Use of Common Elements and Facilities: A Unit Owner shall not place or cause to be placed in or upon any of the common elements and facilities, other than limited common elements to which such Unit Owner has sole access and other than the areas designated as storage areas, any furniture, packages, or objects of any kind.

11. Approval of Payment Vouchers: Either the duly elected Treasurer acting alone or the duly appointed Managing Agent acting alone may approve payment vouchers and make payment of same for expenses incurred for reason of contractual undertakings or contractual services rendered for and to the project so long as each of such expense vouchers does not exceed One Thousand Dollars (\$1,000.00) or such larger amount as may be set from time to time by the Board of Directors. A listing of such contractual indebtedness payment vouchers approved and paid by the Treasurer or Managing Agent shall be submitted to the Board of Directors quarterly for review and reaffirmation by the Board of Directors as to its approval for payment of same. All payment vouchers for expenses incurred other than as above set forth shall require the signatures of any two officers of the Association.

ARTICLE VII - RECORDS AND AUDITS

The Board of Directors and the Managing Agent or bookkeeper, if one is so employed by the Board of Directors, shall keep detailed records of the actions of the Board of Directors and the Managing Agent, minutes of the meetings of the Board of Directors, minutes of the meetings of the Unit Owners, and the financial records and books of account of the Association. Such records and books of account shall include a chronological listing of receipts and expenditures, as well as a separate account for each unit, which account, among other things, shall contain the amount of each common charge assessment and the amount of each special assessment

against such unit, the date when due, the amounts paid thereon, and the balance remaining unpaid. The financial records and books of account shall be available for examination at convenient hours on business days and the several Unit Owners shall be advised accordingly. All financial records and books of account of the Association shall be kept and maintained in accordance with generally accepted accounting practices, and the Board of Directors may in its discretion and from time to time cause to be made an outside audit of such financial records and books of account.

ARTICLE VIII - AMENDMENTS AND RECORDATION

The administration of the Association shall be governed by these Bylaws, a true copy of which has been appended to the Declaration filed of record in the Office of the Register of Deeds. No modification of or amendment to or repeal of these Bylaws shall be valid unless set forth in an Amendment to the Declaration and such Amendment is duly filed of record in the Office of Register of Deeds in each County in which the Property is located. Except in cases of amendments that may be executed by a Declarant as set forth in General Statutes Section 47C-2-117(a), the affirmative vote of Unit Owners owning sixtyseven percent (67%) in the common elements and facilities shall be required to so modify, amend or repeal a Bylaw. All Unit Owners shall be bound to abide by any such modification or amendment upon the same being duly passed and set forth in an Amendment to the Bylaws, duly recorded, as provided for herein.

IN WITNESS WHEREOF, the Declarant has caused these Bylaws to be executed this the 15 day of July, 1999.

West End Partners Limited Partnership
By Tristar Development Group,
General Partner

By: Josh Guhlitz

General Partner

(JGB)

STATE OF NORTH CAROLINA

COUNTY OF ORANGE

I, a Notary Public of the County and State aforesaid, certify that JOSH GUILITZ General Partner of Tristar Development Group, the General Partner of West End Partners Limited Partnership, personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 15th day of July, 1999.

My Commission Expires:
12.30.02

JOSH GUILITZ
Notary Public

(JGB)

AMENDMENT TO BYLAWS
OF
THE FOUNTAINS UNIT OWNERS ASSOCIATION, INC.

The undersigned, being the owners of all units and common interests in The Fountains Condominium, adopt the following amendment to the Bylaws of the corporation as authorized in Article VIII of the Bylaws:

Article III, Section 7 is amended by adding new Subsection (m) as follows:

(m) Notwithstanding any other provision contained in these Bylaws, the Board of Directors may not compensate West End I Partners Limited Partnership or any of its affiliates or related companies or any of its partners for the performance of any service for the Association at a rate higher than the fair market value of such services in the Chapel Hill - Raleigh-Durham, North Carolina area at the time the services are performed.

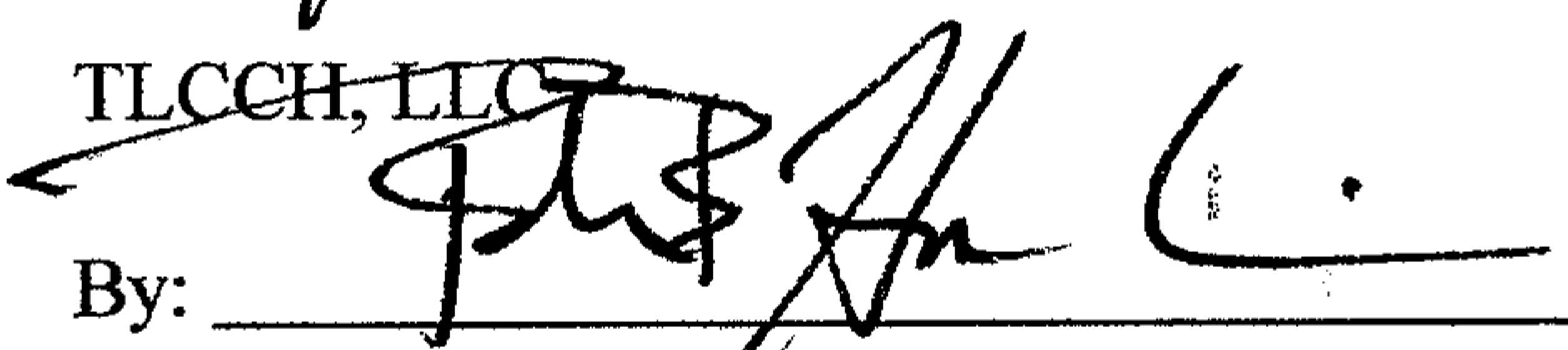
This the 15 day of August 1999.

West End I Partners Limited Partnership

By: Tristar Development Group, a general partnership
General Partner

By: 
General Partner

TLCCCH, LLC

By: 
Manager

NORTH CAROLINA
ORANGE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Josh Gurlitz General Partner of Tristar Development Group, the General Partner of West End Partners Limited Partnership personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 16 day of August, 1999.

Margaret A. Smith
Notary Public

My Commission Expires: June 10, 2001

NORTH CAROLINA
ORANGE COUNTY

I, a Notary Public of the County and State aforesaid, certify that Peter Harkins, Manager of TLCCH, LLC personally came before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 16 day of August, 1999.

Margaret A. Smith
Notary Public

My Commission Expires: June 10, 2001