

FOR REGISTRATION JUDITH A. GIBSON  
REGISTER OF DEEDS  
MECKLENBURG COUNTY, NC  
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**2008059303**

**DECLARATION OF CONDOMINIUM  
STREETS OF TORINGDON MEDICAL PLAZA III OFFICE CONDOMINIUM**

PREPARED BY AND MAIL TO:

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Charlotte, NC 28277

**DECLARATION OF CONDOMINIUM -  
STREETS OF TORINGDON MEDICAL PLAZA III OFFICE CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM – STREETS OF TORINGDON MEDICAL PLAZA III OFFICE CONDOMINIUM, made this 3<sup>rd</sup> day of April, 2008, by TORINGDON PARTNERS II, LLC, a North Carolina limited liability company ("**Declarant**"), pursuant to the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes ("**Act**").

WITNESSETH:

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

WHEREAS, Declarant desires to submit all of said property to the Act.

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

ARTICLE I.  
Definitions

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

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

1.2 Association. Streets of Toringdon Medical Plaza III Owners Association, Inc., a nonprofit corporation organized under Section 47C-3-101, North Carolina General Statutes.

1.3 Board. The Executive Board of the Association.

1.4 Bylaws. The Bylaws of the Association which have been adopted by the Association.

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

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

1.7 Condominium. The condominium created by this Declaration.

1.8 Declarant. Toringdon Partners II, LLC, a North Carolina limited liability company, and (i) any other owner who has executed this Declaration except First Mortgagees

and except persons whose interests in the Property will not be conveyed to Unit Owners and (ii) any person who succeeds to any Special Declarant Rights as defined in Section 47C-1-103(23) of the Act.

1.9 Declarant Control Period. The period commencing on the date hereof and continuing until the earlier of (i) the date two (2) years after Declarant has ceased to offer Units for sale in the ordinary course of business, or (ii) the date upon which Declarant surrenders control of the Condominium, or (iii) the date one hundred twenty (120) days after the Declarant has conveyed seventy-five percent (75%) of the maximum number of Units which Declarant may create on the Property.

1.10 First Mortgage and First Mortgagee. A First Mortgage is a mortgage or deed of trust which has been recorded so as to give constructive notice thereof, and which is a first lien on the Unit or Units described therein. A First Mortgagee is the holder, from time to time, of a First Mortgage as shown by the records of the Office of the Register of Deeds for Mecklenburg County, North Carolina, in which the First Mortgage is recorded, including the Federal National Mortgage Association and including a purchaser at foreclosure sale upon foreclosure of a First Mortgage until expiration of the mortgagor's period of redemption. If there be more than one holder of a First Mortgage, they shall be considered as, and act as, one First Mortgage for all purposes under this Declaration and the Bylaws.

1.11 Limited Common Elements. Those portions of the Common Elements allocated by this Declaration, the Plans or by operation of Section 47C-2-102(2) or (4) of the Act for the exclusive use of at least one but fewer than all of the Units including, but not limited to, any balcony, porch or patio appurtenant to a Unit and any attic storage areas appurtenant to a Unit. That portion of the property upon which heating and air conditioning equipment serving a Unit is located shall constitute a Limited Common Element allocated specifically to the Unit served by such equipment.

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

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

1.14 Plans. The plans of the Condominium, including a survey map depicting the Condominium (the "**Map**") recorded in Unit Ownership File No. 904, Pages 1 in the Office of the Register of Deeds for Mecklenburg County, North Carolina, and by the Act made a part of this Declaration.

1.15 Property. The real estate described on Exhibit A, together with all building and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real estate.

1.16 Rules and Regulations. The rules and regulations of the Condominium promulgated by the Board or the Association from time to time.

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

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

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

1.20 Unit Owner(s). The person or persons, including the Declarant, owning a Unit in fee simple.

## ARTICLE II. Submission of Property to the Act

2.1 Submission. Declarant hereby submits the Property to the Act.

2.2 Name. The Property shall hereafter be known as Streets of Toringdon Medical Plaza III.

2.3 Division of Property into Separately Owned Units. Declarant, pursuant to the Act, and to establish a plan of condominium ownership for the Condominium, does hereby divide the property into five (5) Units and does hereby designate all such Units for separate ownership, subject however, to the provisions of Section 2.4 hereof.

2.4 Alterations of Units. Subject to the provisions of the Bylaws, a Unit may be altered pursuant to the provisions of Section 47C-2-111 and 47C-2-112 of the Act. In addition, Units may be subdivided pursuant to Section 47C-2-113 of the Act.

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

2.6 Unit Allocations. The allocations to each Unit of a percentage of undivided interest in the Common Elements and of a percentage of the Common Expenses are as stated on Exhibit B. The allocation of undivided interest in the Common Elements and of the Common Expenses has been determined by a ratio formulated upon the relation that the square foot area of each Unit bears to the then aggregate square foot area of all Units. The votes are not equally allocated to all Units with each Unit Owner having one (1) vote for each square foot of area within the Unit.

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

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

2.9 Reservation of Special Declarant Rights. Declarant hereby reserves all Special Declarant Rights, as defined in Article 1.17, including the right to subdivide a Unit or convert a Unit previously created into additional Units, Common Elements or both, pursuant to the provisions of Section 47C-2-110 of the Act.

### ARTICLE III. Easements

3.1 Encroachments. In the event that, by reason of the construction, reconstruction, rehabilitation, alteration or improvement of the buildings or improvements comprising a part of the Property, any part of the Common Elements now or hereafter encroaches upon any part of any Unit, or any part of Common Elements an easement for the continued existence and maintenance of each such encroachment is hereby declared and granted and shall continue for so long as each such encroachment exists; provided that in no event shall an easement for such encroachment be created if such encroachment is detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Units so encroached upon.

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

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

3.4 Easements for Utilities. The Units and Common Elements shall be, and are hereby, made subject to easements in favor of the Declarant (until Declarant shall have satisfied all of its obligations under the Declaration and Bylaws and all commitments in favor of any Unit Owner and the Association), the Association, appropriate utility and service companies and governmental agencies or authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements provided for by this Section 3.4 shall include, without limitation, rights of Declarant, the Association, any company providing utility installation or maintenance, any service company, and any governmental agency or authority to install, lay, maintain, repair, relocate and replace gas lines, pipes and conduits, water mains and pipes, sewer and drain lines, telephone wires and equipment, television and equipment facilities (cable or otherwise), electrical wires, conduits and equipment and ducts and vents and any other appropriate equipment and facilities over, under, through, along and on the Units and Common Elements. Notwithstanding the foregoing provisions of this Section 3.4, unless approved in writing by the Unit Owner or Unit Owners affected thereby, any such easement through a Unit shall be located either in substantially the same location as such facilities or similar facilities existed at the time of first conveyance of the Unit by the Declarant to a grantee other than the Declarant, or so as not to materially interfere with the use of occupancy of the Unit by its owners.

3.5 Declarant's Easement. Declarant hereby reserves such easements through the Common Elements as may be reasonably necessary for the purposes of discharging its obligations, exercising Special Declarant Rights, and completing the development and construction of the Condominium, which easements shall exist as long as reasonably necessary for such purpose.

3.6 Easements to Run With Land. All easements and rights described in this Article III are appurtenant easements running with the land, and except as otherwise expressly provided in this Article III shall be perpetually in full force and effect, and shall inure to the benefit of and be binding upon Declarant, its successors and assigns owning the Property, or any portion thereof, Declarant's mortgagees, the Association, Unit Owners, Occupants, First Mortgagees and any other person having any interest in the Condominium or any part thereof. The Condominium and every part thereof shall be conveyed and encumbered subject to and together with all easements and rights described in this Article III, whether or not specifically mentioned in any such conveyance or encumbrance.

#### ARTICLE IV.

##### Restrictions, Conditions and Covenants

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

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

4.3 Use Restricted: Use by Declarant.

(a) Except as may be otherwise expressly provided in this Declaration, each Unit may be used for general and medical office purposes and for such other purposes as are incidental to the use of such offices and are, in the opinion of the Board in its sole discretion, consistent with the maintenance of the general character of the Property as a first class office condominium.

(b) Except as reserved by Declarant, no advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Property subject to this Declaration without the prior written approval of the Board.

(c) The foregoing provisions of this Section or any other provision of this Declaration or the Bylaws notwithstanding, Declarant shall have an easement to maintain sales offices and models for sales of Units throughout the Condominium. Declarant shall have the right to relocate, from time to time, and to discontinue and reestablish, from time to time, within the Condominium, until all of the Units have been conveyed to a Unit Owner other than a Declarant, any one or more of such offices or models. Declarant also shall have the right to change the use or combination of uses of such offices or models, provided that such offices or models shall be used only for sales offices or models.

(d) Declarant shall also have an easement to maintain signs on the Common Elements advertising the Condominium until all of the Units have been conveyed to Unit Owners other than a Declarant. Declarant shall remove all such signs not later than thirty (30) days after all of the Units have been conveyed to Unit Owners other than Declarant and shall repair or pay for the repair of all damage done by removal of such signs.

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

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

4.6 Lease of Units. Any lease of a Unit or portion thereof shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the Declaration, Bylaws and Rules and Regulations for the Condominium (the "**Condominium Documents**") and that any failure by the lessee to comply with all the terms of such Condominium Documents shall constitute a default under the Lease.

4.7 Rules and Regulations. In addition to the foregoing restrictions, conditions and covenants concerning the use of the Condominium, reasonable rules and regulations not in

conflict therewith and supplementary thereto may be promulgated and amended from time to time by the Board or the Association, as more fully provided in the Bylaws.

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

4.9 Access Easement. Each Unit Owner shall have the access and common area easement rights and privileges set forth in Declaration of Easements and Restrictions Regarding Outlots recorded in Book 18920, Page 294, as amended by First Amendment to Declaration of Easements and Restrictions Regarding Outlots recorded in Book 21316, Page 554, Mecklenburg County Public Registry (the "**Outlot Declaration**"). Such rights and privileges shall be deemed Common Elements and are further described in the Outlot Declaration.

4.10 Use of the Easements and Property Rights. The use of the easements and property rights granted herein shall be subject in all respects to the restrictions, conditions and covenants of the Outlot Declaration and the expenses therefore shall be an obligation of the Association.

4.11 Access to Units. The Association and its agents shall have access to each Unit from time to time during reasonable working hours, upon oral or written notice to its Unit Owner or Occupant of the Unit, as may be necessary for the maintenance, repair or replacement of any of the Common Elements. The Association and its agents shall also have access to each Unit at all times without notice, as may be necessary to make emergency repairs to prevent damage to Common Elements or to other Units.

## ARTICLE V. Assessments

5.1 Assessment Liens. The Board has the power to levy assessments against the Units for Common Expenses. Such assessments, together with a late payment charge of One Hundred Fifty and No/100 Dollars (\$150.00) for assessment which remains unpaid for more than thirty (30) days past the due date with interest at the rate of eighteen percent (18%) per annum, costs and reasonable attorney's fees shall be a lien on the Units against which they are assessed, and if and payment thereof becomes delinquent, the lien may be foreclosed and the Unit sold, or a money judgment obtained against the persons liable therefor, all as set forth in the Bylaws.

### 5.2 Personal Liability of Transferees; Statement; Liability of First Mortgage.

(a) The personal obligation for assessments which are delinquent at the time of transfer of a Unit shall not pass to the transferee of said Unit unless said delinquent assessments are expressly assumed by said transferee.

(b) Any transferee referred to in (a) above shall be entitled to a statement from the Board, pursuant to the Bylaws, and such transferee's Unit shall not be subject to a lien for any unpaid assessments against such Unit in excess of the amount therein set forth.



(c) Where a First Mortgagee, or other person claiming through such First Mortgagee, pursuant to the remedies provided in a mortgage or deed of trust, or by foreclosure or by deed, or assignment, in lieu of foreclosure, obtains title to a Unit, the liability of such First Mortgagee or such other person for assessments shall be only for the assessments, or installments thereof, that would become delinquent, if not paid, after acquisition of title. For purposes hereof, title to a Unit shall be deemed acquired by foreclosure upon expiration of the applicable period of redemption.

(d) Without releasing the transferor from any liability therefore, any unpaid portion of assessments which is not a lien under (a) above, or, resulting, as provided in (c) above, from the exercise of remedies in a mortgage or deed of trust, or by, foreclosure thereof or by deed, or assignment, in lieu of such foreclosure, shall be a Common Expense collectible from all Unit Owners, including the transferee under (b) above and the First Mortgagee of such other person under (c) above who acquires ownership by foreclosure or by deed, or assignment, in lieu of foreclosure.

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

5.4 Date of Commencement of Annual Assessments. The annual assessments provided for herein shall commence as to all Units on the first day of the month following the conveyance of the first Unit by the Declarant. The first annual assessment shall be adjusted according to the number of months then remaining in that fiscal year.

5.5 Assessments. Assessments shall be due and payable in advance annually. As provided in the Bylaws and as required by the Act, Declarant shall pay all accrued expenses of the Condominium until assessments are levied against the Units. An assessment shall be deemed levied against a Unit upon the giving of notice by the Board to a member of the Association who is a Unit Owner of that Unit. Unit Owners shall have no obligation to pay annually assessments until an assessment is levied.

## ARTICLE VI.

### Management, Maintenance, Repairs Replacements, Alterations and Improvements

#### 6.1 Common Elements.

(a) By the Association. The management, replacement, maintenance, repair, alteration, and improvement of the Common Elements shall be the responsibility of the Association (except for the Common Elements described in the Outlot Declaration with regard to the Common Elements that are not Limited Common Elements), and subject to the provisions of Section 6.2 hereof, the cost thereof shall be a Common Expense to the extent not paid by Unit Owners pursuant to Section 6.1 (b) hereof. In addition, the Association shall be responsible for providing and paying for water and sewer for all Units. All damage caused to a Unit by any work

on or to the Common Elements done by or for the Association shall be repaired by the Association, and the cost thereof shall be a Common Expense.

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

#### 6.2 Common Expenses Associated with Limited Common Elements or Benefiting Less Than All Units.

(a) Any Common Expenses associated with the maintenance, repair, or replacement of a Limited Common Element shall be assessed against the Unit, or in equal shares to the Units, to which such Limited Common Element was allocated at the time the expense was incurred.

(b) In addition, the Association may assess any Common Expense benefiting less than all of the Units against the Units benefited in proportion to their Common Expense liability.

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

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

#### 6.5 Right of Entry.

(a) By the Association. The Association, and any person authorized by the Association, may enter any Unit or any of the Limited Common Elements in case of any emergency or dangerous conditions or situation originating in or threatening that Unit or any of the Limited Common Elements or other Units. The Association, and any person authorized by the Association, after reasonable notice to a Unit Owner or Occupant, may enter that Unit or any of the Limited Common Elements for the purposes of performing any of the Association's powers under the Act, this Declaration or the Bylaws with respect to that or any other Unit, any

Limited Common Elements, or the Common Elements. Notwithstanding Section 6.4, the Association shall be responsible for the repair of any damage caused by the Association or its authorized person to the entered Unit, and the cost thereof shall be a Common Expense. All such entries shall be made and done so as to cause as little inconvenience as possible to the Unit Owner and Occupant of the entered Unit or any portion of the Limited Common Elements allocated to the Unit Owner.

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

## ARTICLE VII.

### Insurance

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

7.2 Public Liability Insurance. The Association shall maintain public liability insurance for the benefit of the Unit Owners, Occupants, the Association, the Board, the managing agent, if any, the Declarant, and their respective officers, directors, agents and employees, in such amounts and with such coverage as shall be determined by the Board; provided that the public liability insurance shall be for at least One Million and no/100 Dollars (\$1,000,000.00) per occurrence for death, bodily injury and property damage. Said insurance shall comply in all respects with the requirements of the Act and shall contain a severability-of-interest endorsement precluding the insurer from denying liability because of negligent acts of any insured; insure all of such benefited parties against such liability arising out of or in connection with the use, ownership or maintenance of the Common Elements, and the streets, sidewalks and public spaces adjoining the Condominium; and insure the Association, the Board, the managing agent, if any, and their respective officers, directors, agents and employees against such liability arising out of or in connection with the use or maintenance of the Units.

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

7.4 Other Insurance. The Association may procure such other insurance, including worker's compensation insurance, as it may from time to time deem appropriate to protect the Association or the Unit Owners.

7.5 Insurance Trustee. The Board may engage, and pay as a Common Expense, any appropriate person to act as an insurance trustee to receive and disburse insurance proceeds upon such terms as the Board shall determine, consistent with the provisions of the Act and this Declaration.

7.6 Individual Policy for Unit Owners. Each Unit Owner may obtain insurance, at his own expense, affording personal property, condominium assessment, personal liability, and any other coverage obtainable, to the extent and in the amounts such Unit Owner deems necessary to protect his own interest; provided that any such insurance shall contain waivers pursuant to Section 6.4 and shall provide that it is without contribution as against the insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds that would otherwise be payable on the insurance purchased by the Association due to the proration of the insurance purchased by a Unit Owner under this Section, such Unit Owner shall be liable to the Association to the extent of such reduction and shall pay the assigns the proceeds of his insurance, to the extent of such reduction, to the Association.

#### ARTICLE VIII. Casualty Damage

If all or any part of the Property shall be damaged or destroyed, the same shall be repaired or replaced unless: (1) the Condominium is terminated, (2) repair or replacement would be illegal under any State or local health or safety statute or ordinance, or (3) the Unit Owners elect not to rebuild or replace by a ninety percent (90%) vote, including one hundred percent (100%) approval of Owners of Units not to be rebuilt or Unit Owners assigned to Limited Common Elements not to be rebuilt. All proceeds of insurance shall be used and applied in accordance with the provisions of Section 47C-3-113(e) and (h) of the Act.

#### ARTICLE IX. Condemnation

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

#### ARTICLE X. Termination

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

ARTICLE XI.  
Amendment

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

ARTICLE XII.  
Rights of First Mortgagees

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

12.1 Availability of Condominium Documents, Books, Records and Financial Statements. The Association shall, upon request and during normal business hours, make available for inspection by Unit Owners and the First Mortgagees and the insurers and guarantors of a First Mortgage on any Unit, current copies of the Declaration, the Bylaws, the Rules and Regulations governing the Condominium and the books, records and financial statements of the Association. The Association shall provide a financial statement for the preceding fiscal year if requested in writing by a First Mortgagee or insurer or guarantor of a First Mortgage. The Association shall, upon request and during normal business hours, make available for inspection by prospective purchasers of Units, current copies of the Declaration, Bylaws, the Rules and Regulations governing the Condominium, and the most recent annual financial statement.

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

12.3 Notice. Each First Mortgagee and each insurer or guarantor of a First Mortgage, upon written request stating its name and address and describing the Unit encumbered by the First Mortgage, held, insured or guaranteed, shall be entitled to timely written notification by the Association of (i) any condemnation or casualty loss that affects either a material portion of the Condominium or the Units securing its First Mortgages; (ii) any 60-day delinquency in the payment of assessments or charges owed by the Unit Owner of the Unit on which the First Mortgagee held its First Mortgage or in the performance of any obligation under this Declaration or the Bylaws by said Unit Owner; or (iii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

ARTICLE XIII.  
General Provisions

13.1 Conflict With the Act; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. The invalidity of any covenant, restriction, condition,

limitation, provision, paragraph or clause of this Declaration, or of any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

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

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

13.4 Exhibits. Exhibits A, B and C attached hereto are hereby made a part hereof.

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

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

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

[The next page is the signature page.]

IN WITNESS WHEREOF, Declarant hereby executes this Declaration by and through its authorized representatives on the day and year first above written.

TORINGDON PARTNERS II, LLC

By: *Diane B. Rivers*  
Name: Diane B. Rivers  
Title: Manager

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, MARIBEL P. ELSTON, a Notary Public of the <sup>UNION</sup> County and State aforesaid, certify that Diane B. Rivers, who is the Manager of TORINGDON PARTNERS II, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged that she is Manager of said limited liability company, and that as Manager being duly authorized to do so, voluntarily executed the foregoing instrument on behalf of said limited liability company for the purposes stated therein.

I certify that the Signatory personally appeared before me this day, and

(check one of the following):

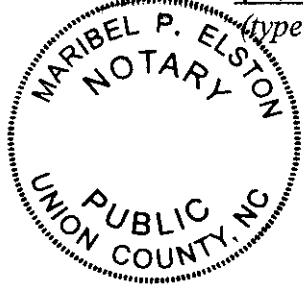
- (I have personal knowledge of the identity of the Signatory); or
- (I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of: (check one of the following)
  - a driver's license; or
  - other (describe: \_\_\_\_\_); or
  - (a credible witness has sworn to the identity of the Signatory).

WITNESS my hand and official seal this 3<sup>rd</sup> day of APRIL, 2008.

*Maribel P. Elston*  
Notary Public MARIBEL P. ELSTON  
(type or print name)

My commission expires: 2-5-2011

(SEAL)



CONSENT OF MORTGAGEE

First Charter Bank, the holder of a deed of trust recorded in the Office of the Mecklenburg County, North Carolina Register of Deeds, in Book 22625, Page 9, amended by an amendment to deed of trust recorded in the Office of the Mecklenburg County, North Carolina Register of Deeds, in Book 22763, Page 312, and Patricia M. Vogel or Ronnie D. Blanton, in its capacity as trustee under the aforesaid deed of trust, hereby consent to the execution and delivery of the foregoing Declaration of Condominium, with exhibits thereto (the "Declaration"), and to the filing thereof, in the office of the County Recorder of Mecklenburg County, North Carolina, and further subject and subordinate the above-described deed of trust to the provisions of the foregoing Declaration with attached exhibits (including, without limitation, any easements reserved therein).

IN WITNESS WHEREOF, First Charter Bank, by its authorized officer, and Patricia M. Vogel or Ronnie D. Blanton, have caused this Consent to be executed this 4 day of April, 2008.

First Charter Bank

By: [Signature]
Name: Jeff Milton
Title: Senior Vice President

STATE OF North Carolina )
: ss:
COUNTY OF Mecklenburg)

I, Toni P. Stephens, a Notary Public of Mecklenburg County, State of N.C., certify that Jeff Milton, personally came before me this day and, being duly sworn, acknowledged that he/she is S.V. President of First Charter Bank and that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation, and that said writing was signed and sealed by him/her in behalf of said corporation by its authority duly given. And the S.V. President acknowledged the said writing to be the act and deed of said corporation.

Witness my hand and official stamp or seal this 4th day of April, 2008.

My Commission Expires: 6-4-08

Toni P. Stephens
Notary Public

[NOTARY SEAL]

TONI P. STEPHENS
NOTARY PUBLIC
MECKLENBURG COUNTY, NC
MY COMMISSION EXPIRES 6-4-08



Trustee

Patricia M Vogel  
Name: Patricia M Vogel

STATE OF North Carolina)

: ss:

COUNTY OF Lincoln )

I, Sarah E. Malloy, a Notary Public of Lincoln County, State of NC,  
certify that Patricia M. Vogel, personally came before me this day and  
acknowledging to me that he or she signed the foregoing document.

Witness my hand and official stamp or seal this 3rd day of April, 20 08

My Commission Expires:

Sarah E Malloy  
Notary Public

[NOTARY SEAL]



**Exhibit A**  
**Legal Description**

Lying and being situate in Mecklenburg County, North Carolina, and being more particularly described as follows:

Being all of Lot K of a Plat titled "Subdivision of the Streets of Toringdon, Phase 1, Map 3 Lot J and K, City of Charlotte, County of Mecklenburg, North Carolina" recorded in the Office of the Registrar of Deeds in Map Book 46 at pages 835, 837 and 839.

TOGETHER WITH the benefits and subject to the burdens contained in (i) that certain Reciprocal Easement Agreement recorded in Book 15971 at Page 549, Mecklenburg County Registry, (ii) that certain agreement regarding Easements and covenants recorded in Book 11354 at Page 349, Mecklenburg County Registry, and (iii) that certain Declaration of Restrictions and Easements Regarding Outlots recorded in Book 18920 at Page 294, Mecklenburg County Registry; (iv) that certain Amendment to Declaration of Restrictions and Easements Regarding Outlots recorded in Book 21316 at page 554 and (v) that certain Easement Agreement recorded in Book 20925, page 720, Mecklenburg County Registry.

**Exhibit B**  
**Unit**

<u>Unit Number</u>	<u>Percentage in Common Elements and Common Expenses</u>
Unit 100	30.56%
Unit 102	20.07%
Unit 200	23.66%
Unit 202	12.24%
Unit 204	13.48%

**Exhibit C**  
**Encumbrances**

1. Taxes, dues and assessments for the year 2008 due and payable, but not yet delinquent; and those for subsequent years, not yet due and payable.
2. Easements, setback lines and any other matters shown on plat recorded in Map Book 33, page 223; Map Book 37, page 787; Map Book 39, page 597; Map Book 43, pages 607-611; Map Book 44, pages 197, 199, and 201, and Map Book 46, pages 835, 837, and 839.
3. Declaration of Easements, Covenants, Conditions and Restrictions for Toringdon filed for record in Book 11354, page 274.
4. Easements to City of Charlotte recorded in Book 14509, page 334; Book 14805, page 467; Book 16430, page 101; and Book 17757, page 786.
5. Terms and conditions of the Reciprocal Easement Agreement to Atkins Circle I, LLC recorded in Book 15971, page 549.
6. Right of way to Duke Power Company recorded in Book 7487, pages 386 and 403.
7. Terms and conditions to that agreement regarding Easements and Covenants recorded in Book 11354, page 349.
8. Terms and conditions of Declaration of Restrictions and Easements Regarding Outlets recorded in Book 18920, page 294, as amended in First Amendment to Declaration of Restrictions and Easements Regarding Outlots recorded in Book 21316, page 554, and rights of others in and to the use thereof.
9. Right of Way Agreement in favor of Duke Energy Corporation recorded in Book 20270, page 500.
10. Declaration of Restriction by Streets of Toringdon, LLC recorded in Book 20925, page 714.
11. Terms and conditions of Easement Agreement by and between Streets of Toringdon, LLC and Sticky Toringdon, LLC recorded in Book 20925, page 720.
12. Any rights, easements, interests, claims or other matters revealed on survey by C. Andrew Heath, Jr., P.L.S. dated October 4, 2006.



JUDITH A. GIBSON  
REGISTER OF DEEDS, MECKLENBURG  
COUNTY & COURTS OFFICE BUILDING  
720 EAST FOURTH STREET  
CHARLOTTE, NC 28202

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