

EXHIBIT F - DECLARATIONS OF COVENANTS, CONDITIONS, AND RESTRICTIONS

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DECLARATION
of
Covenants, Conditions and Restrictions
for
UNION SQUARE

Prepared by L James Blackwood II

Pick Up: CITY

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DECLARATION
of
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for
UNION SQUARE

SOUTH ELM DEVELOPMENT GROUP, LLC, a North Carolina limited liability company, hereafter the “*Declarant*” and the Redevelopment Commission of Greensboro, a North Carolina municipal corporation, hereafter the “*Contingent Declarant*,” make this DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this “*Declaration*”) on the 1st day of April, 2015.

DECLARATION:

The Declarant, who is the Master Developer, and the Contingent Declarant, who is the current owner of all of the property in Greensboro, North Carolina, described on Exhibit A (“*Union Square*”), hereby submit this Declaration. The Declarant and Contingent Declarant hereby declare that Union Square and any other property made subject to this Union Square Declaration by Supplemental Declaration (together, “*Union Square*”) shall be held, sold and conveyed subject to the covenants, restrictions and easements of this Union Square Declaration, which shall run with the land and be binding upon all owners of any portion of Union Square, their heirs, successors and assigns, and upon all other parties, heirs, successors and assigns having any right, title or interest in all or any part of Union Square.

The following are attachments to this Declaration and are hereby fully incorporated by reference:

- Exhibit A, Legal Description, Initial Property of Union Square
- Exhibit B, Master Plan Area Description of Union Square
- Exhibit C, The Articles of Incorporation for Union Square Assembly, Inc., and
- Exhibit D, The Bylaws for Union Square Assembly, Inc.

Part I:

Definitions

The following definitions apply wherever the capitalized terms appear in this Union Square Declaration. Additional terms that apply only to one article are defined the first time they appear.

1.1 Allocated Interests. As further described in Section 3.1, each Parcel shall be assigned an Allocated Interest for assessment and voting purposes.

1.2 Architectural Review Board (ARB). The “*Architectural Review Board*” or “*ARB*” is the panel established by the Board to administer and approve modifications to Parcels after original construction is complete as provided in Part V.

1.3 Articles. “*Articles*” are the Articles of Incorporation of the Assembly, which are attached as Exhibit C to this Union Square Declaration.

1.4 Assembly. The “*Assembly*” is the Union Square Assembly, Inc., a North Carolina nonprofit corporation, its successors and assigns. The Assembly, whose members are the Owners, is responsible for maintaining the Commons and enforcing this Declaration.

1.5 Assessments. “*Assessments*” is the collective term for the following charges:

(a) General Assessment. The “*General Assessment*” is the amount distributed among all Owners to meet the Assembly’s annual budgeted general expenses, as described in Section 4.2.2.

(b) Individual Parcel Assessment. An “*Individual Parcel Assessment*” is a charge made to a particular Parcel Owner for charges relating only to that Parcel, as provided in Section 4.2.4.

(c) Special Assessment. A “*Special Assessment*” may be charged to each Parcel for Capital Improvements or emergency expenses, in accordance with the provisions of Section 4.2.3.

1.6 Board. “*Board*” is the Board of Directors of the Assembly.

1.7 Bylaws. “*Bylaws*” are the Bylaws of the Assembly. The form of the initial Bylaws, as proposed, is attached as Exhibit D to this Declaration.

1.8 Capital Improvement. A “*Capital Improvement*” is a material alteration or substantial addition or improvement to the Commons, or the purchase of additional property to be added to the Commons. Any reasonably necessary repair or replacement of existing improvements with materials of similar utility shall not be considered a Capital Improvement.

1.9 Commons. The “*Commons*” comprises real property or easement rights owned by the Assembly for the benefit of its members. The Commons also includes any improvements on that real property and any other property of any type specifically designated as the Commons. The Commons are not dedicated to the City of Greensboro for use by the general public.

1.10 Common Roads. The streets, parking lots and alleys within Union Square that are not dedicated to the public or privately owned shall be owned by the Assembly as part of the Commons.

1.11 Declarant and Contingent Declarant. The “*Declarant*” is South Elm Development Group, LLC, a North Carolina limited liability company, its successors and assigns, or any successor or assign of all or substantially all of its interests in the development of Union Square unless the instrument conveying such interests provides otherwise. The Declarant may also be an Owner for so long as the Declarant is record owner of any Parcel. The “*Contingent Declarant*” is the Redevelopment Commission of Greensboro, which shall automatically become the Declarant if Declarant is unable to fulfill its obligations, has been terminated or ceases for any reason as Master Developer of the South Elm Redevelopment Area (now known as Union Square at South Elm) under the terms of the Master Development Agreement of June 12, 2013 between Declarant and the Redevelopment Commission of Greensboro, as amended, and in such event all references to Declarant shall be defined to include Contingent Declarant.

1.12 Declaration. “*Declaration*” is this Declaration of Covenants, Conditions and Restrictions for Union Square.

1.13 Design Guidelines. The “*Design Guidelines*” are the Union Square Design Guidelines and the Green Standards for Union Square, both dated April 15, 2014, as revised, which establish the plan for development of Union Square through the regulation of land use, architecture, landscaping, and environment.

1.14 Design Review Board. The “*Design Review Board*” is the panel established by Declarant to administer the approval process for original construction of improvements on undeveloped Parcels as provided in Part V.

1.15 Development Period. The “*Development Period*” begins with the recording of this Declaration and continues for six months after the Declarant or its affiliates no longer owns or controls any Parcel in the Master Plan Area. For the purposes of this definition, the term “*Parcel*” shall include all planned Parcels, whether or not platted.

1.16 Live/Work Parcel. A “*Live/Work Parcel*” is a Parcel that is intended under the Design Guidelines to be flexible in use and that may be used as a residence, a business, or a combination

of both. A mixed-use parcel that has been divided into separately conveyable airspace or condominium units is not a Live/Work Parcel but instead comprises two or more separate Parcels.

1.17 Master Plan Area. The “*Master Plan Area*” is all of that property described in Exhibit B attached hereto which property is currently owned by the Contingent Declarant and as to which Developer is the Master Developer and which may be added to Union Square in accordance with Section 2.1.2.

1.18 Merchants’ Council. The “*Merchants’ Council*” is established by Section 6.4 of this Union Square Declaration to promote business activity. The Merchants’ Council is unincorporated but may be incorporated at a later time.

1.19 Mortgagee. A “*Mortgagee*” is an institutional lender that holds a bona fide first mortgage encumbering a Parcel or the holder of a purchase-money mortgage on a Parcel. The term “institutional lender” specifically includes a bank, savings and loan association, a mortgage lending company, an insurance company, and the Federal National Mortgage Association or similar agency. A purchase-money mortgage is a first mortgage given by a buyer, as borrower, to a seller, as lender, as part of the purchase price of the Parcel.

1.20 Owner. “*Owner*” is the record owner, whether one or more persons or entities, of the fee simple title to any Parcel as defined by this Declaration.

1.21 Parcel. A “*Parcel*” is the smallest piece of real property (including air space) that may be separately conveyed and that has been made subject to this Declaration. A Parcel may be a platted lot improved with, or intended to be improved with, an attached or detached mixed-use building or commercial building. If a property has been submitted to a condominium form of ownership, each condominium unit shall be considered a Parcel.

1.22 Registered Mortgagee. A “*Registered Mortgagee*” is a Mortgagee that has registered with the Assembly and provided current contact information.

1.23 Supplemental Declaration. “*Supplemental Declaration*” is any instrument that may be recorded by the Declarant, the Contingent Declarant or the Assembly in accordance with Section 2.1.2 to add property to Union Square.

1.24 Union Square is that real property made subject to this Declaration. Union Square initially comprises all of the property described on Exhibit A attached hereto, together with any additional property added by Supplemental Declaration in accordance with Section 2.1.

Part II:

Development Plan

- 2.1 Property Subject to this Declaration
- 2.2 Relationship to Union Square
- 2.3 Easements
- 2.4 Residential Uses within Union Square

2.1 Property Subject to the Declaration

2.1.1 Effect. The land that shall be subject to this Declaration, known as “*Union Square*,” comprises the land described on Exhibit A on the first page of this Declaration, plus any land that is submitted later in accordance with Section 2.1.2. The provisions of this Declaration run with the land, which means that once land has been made subject to this Declaration, the land is bound by the Declaration even if the land is sold to a new Owner (unless the land is withdrawn as provided in Section 2.1.4).

2.1.2 Additional Property.

(a) By the Declarant and Contingent Declarant. The Declarant and/or the Contingent Declarant shall have the right, but not the obligation, for a period of thirty (30) years from the effective date of this Declaration, from time to time in their sole discretion, and with the owner’s consent, to add to the Union Square any or all of the following properties:

- (i) any part of the Master Plan Area described in Exhibit B
- (ii) with the owner’s consent, any contiguous property,
- (iii) with the owner’s consent, property any portion of which is within one-half mile of any portion of Union Square (including any property separated from Union Square by a public street, body of water or other property), or
- (iv) with the owner’s consent any other property with a reasonable relationship to Union Square.

(b) By the Assembly. With the owner’s consent, property of any type may be added to Union Square by a majority vote of the Board. Such right shall begin when the Declarant no longer selects a majority of the Board of Directors and shall extend indefinitely.

(c) Supplemental Declaration. A Supplemental Declaration adding the additional property shall become effective upon being recorded in Guilford County public records. The Supplemental Declaration shall require the consent and joinder of the owner of the additional property, if different from the party recording the Supplemental Declaration.

(d) Special Provisions. The Supplemental Declaration may modify or add to the provisions of this Declaration as to the additional property if needed to reflect the different character of the additional property.

2.1.3 Additional Commons. The Declarant may convey to the Assembly additional Commons. The Assembly shall accept title to, and maintenance responsibility for, any Commons conveyed to it by the Declarant.

2.1.4 Withdrawal of Property. The Declarant reserves the right to withdraw property from Union Square so long as all Owners of the area to be withdrawn consent and appropriate access to the remaining portions of the Union Square is preserved.

2.2 Relationship to Union Square

2.2.1 Mixed-use Community. Union Square at South Elm is a mixed-use community that includes both residential and commercial property.

2.2.2 Jurisdiction. The following shall apply to any portion of Union Square that is subject to this Declaration:

(a) Commons. Except for those properties specifically deeded to the Assembly, all Commons within Union Square shall be regulated and maintained solely by the Assembly. For instance, Commons may include parking lots, plazas and other common areas that are designed primarily for commercial use and that are not dedicated to the public. Where specifically deeded to the Assembly, the Assembly may own and maintain some Commons within Union Square, particularly drainage facilities, or streets that are not dedicated but are intended for general circulation, and these shall not be considered Commons.

(b) Architectural Review. For all property within Union Square, whether commercial or residential, the Design Review Board and Architectural Review Board established under this Declaration shall assume and be solely responsible for all architectural review functions and Green Standards compliance for both new construction and modification of existing improvements under this Declaration as provided in Part V.

(c) Regulation of Commercial Uses. Commercial uses shall be regulated under this Declaration.

2.3 Easements

2.3.1 Owners' Easement of Enjoyment. Every Owner shall have a right and easement for appropriate use of the Commons, subject to regulation by the Assembly. Such right shall extend to the Owner's tenants, agents, guests, clients and customers. This easement shall be appurtenant to and shall pass with title to every Parcel.

2.3.2 Common Roads. The Common Roads (other than alleys that serve as rear access to Parcels and are not intended to be used other than by the Parcel Owners served by the alley) are hereby made subject to an easement for pedestrian and vehicular access to and from other parts of Union Square. Except for occasional closure for street fairs or other events or as reasonably necessary to maintain their private nature, the Common Roads are subject to use by the general public and are not to be gated or access otherwise restricted.

2.3.3 Easements in Favor of the Declarant and Union Square Assembly. The Declarant hereby reserves for itself, its successors and assigns and for the Assembly and its assigns the following perpetual, nonexclusive easements, which shall benefit the Union Square and all other properties owned by Declarant or its assigns which are adjacent to, or reasonably near, the Union Square (including property separated from the Union Square by a public road):

(a) Utility Easements. An easement upon, across, over, through, and under Union Square for ingress, egress, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems include, but are not limited to, water, sewer, irrigation systems, drainage, telephone, electricity, gas, television, cable or communication lines and other equipment. Except where indicated on the plat or as described in specific recorded easements, such easements shall be located within the street right-of-way or other Commons, or in alley easement areas. By virtue of this easement the Declarant, and its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits.

(b) Police Powers. A blanket easement throughout Union Square for private patrol services, and for police powers and services supplied by the local, state and federal governments.

(c) Drainage. A blanket easement and right on, over, under and through the ground within Union Square for drainage of surface water and other erosion controls.

(d) Encroachment. An easement for any improvements constructed on the Commons which encroach on any Parcel, whether due to any minor deviation from the subdivision plat of Union Square or the settling or shifting of any land or improvements.

(e) Maintenance of the Commons. To the extent reasonably necessary, an easement over any Parcel for maintenance of the Commons or to perform any duties required or permitted to be performed by the Assembly, its agent or assigns.

2.4 Residential Uses within Union Square

2.4.1 Residential Parking. Residents shall be assured reasonable parking access. It is acknowledged that there shall be limited numbers of parking spaces, that there may not be sufficient spaces to guarantee a parking place at all times during periods of high usage and that accommodations will need to be made and revised from time to time to balance the needs of residents and commercial users.

2.4.2 Pedestrian Access Easement. Each owner or tenant of a residential unit is hereby granted an easement for pedestrian access from the public right-of-way to the unit, and vehicular access from the public right-of-way to designated parking areas.

2.4.3 Contribution. Where specifically provided in the conveyance of the residential property or other recorded instrument, the owner of the residential property may be required to contribute a reasonable pro rata share of the maintenance of such parking and access easement areas.

2.4.4 Architectural Review. As provided in Section 2.2.2(b), all residential property within Union Square shall be subject to architectural review under the provisions of this Declaration.

Part III:

Union Square Assembly

- 3.1 Allocated Interests
- 3.2 Formation of the Union Square Assembly
- 3.3 Commons
- 3.4 Other Maintenance Responsibilities
- 3.5 Insurance and Casualty

3.1 Allocated Interests

3.1.1 Generally. Each Parcel shall be one Allocated Interest per two thousand (2,000) square feet of net square footage, as defined in Section 3.1.4. Space may be assigned fractional interests and shall be rounded to the nearest 200 square feet, or one-tenth of an Allocated Interest. *For instance, 850 square feet of space shall be assigned an Allocated Interest of 0.4, and 2,950 square feet shall be assigned an Allocated Interest of 1.5.* If so approved by the Board, the Allocated Interest may be adjusted for use as follows, based on typical and anticipated use of the Commons:

- (a) Office, institutional, and educational use (whether for profit or not-for-profit) shall be multiplied by a factor between 0.5 and 1.0.
- (b) Restaurant use shall be multiplied by a factor between 1.0 and 1.5.
- (c) Retail and other commercial use shall be multiplied by a factor between 1.0 and 1.5.
- (d) Residential use shall be multiplied by a factor between 0.5 and 1.0.

The Board may adopt rules to interpret and apply this adjustment. Wherever used in this Declaration, Allocated Interests shall refer to the interests as adjusted.

3.1.2 Unimproved Lots. Lots that have been conveyed to an entity other than the Declarant and that do not have a building that is substantially complete shall pay a reasonable amount as determined by the Assembly, but not to exceed one Allocated Interest per year.

3.1.4 Definition of Net Square Footage. For purposes of calculating Allocated Interests, square footage shall include all conditioned space that may be used for commerce, office, institutional, educational, storage and other support areas, measured to the center of the wall for interior walls and to the outside of exterior walls. Square footage shall not include any stairwells or walkways used primarily to access residential space. At the discretion of the Assembly, decks and other unconditioned spaces that are used on a regular basis for commerce may also be considered as part of the square footage and assessed at a reduced rate, depending on use. The Assembly in its reasonable discretion may determine the amount of assessed square footage for a particular Parcel, may determine whether a use is residential or commercial and may make rules for calculating square footage that weight residential square footage differently than commercial square footage and for rounding square footage. The Assembly may adjust or revise Allocated Interests if uses for the Parcel change.

3.2 Formation of the Union Square Assembly

3.2.1 Establishment; Membership. The Assembly shall be established under North Carolina law as a not-for-profit corporation. Every Owner of a Parcel subject to this Declaration shall be a mandatory member of the Assembly.

3.2.2 Voting.

(a) **Weighted Votes.** Each Owner shall have a vote in the Assembly, with votes to be weighted in accordance with Allocated Interests. Fractional votes are permitted.

(b) **Exercise of Vote.** When more than one person holds an interest in a Parcel, all such persons shall be members. However, the number of votes for that Parcel shall not be increased, and the Owners must determine among themselves how the Parcel's vote may be exercised. Corporations, partnerships and other entities shall notify the Assembly of the natural person who shall exercise its vote. To the greatest extent permitted by law, the Assembly may institute voting by electronic or other means.

(c) **Methods.** Wherever used in this Declaration, approval by a majority or other proportion of the Owners refers to a vote based on Allocated Interests in accordance with this Article, either at a properly called membership meeting or through a voting procedure established under Section (d). Where this Declaration specifies consent in writing, or request in writing, by a majority or other proportion of Owners, the necessary number is based on the Allocated Interests represented by the total membership of the Assembly, and signatures may be collected without a membership meeting or other voting procedure.

(d) **Action without Meeting.** If permitted by the Board, the membership may approve any matter (specifically including the election of directors) by a written ballot procedure, which may be conducted by mail, e-mail, fax or other means, or by written consent without a meeting, without prior notice and without a vote. Voting or consents shall be in accordance with the Bylaws and statute.

3.2.3 Board of Directors. Except as specifically provided in this Declaration or statute, the Board has been delegated the power, and shall have the authority to act on behalf of the Assembly and to make all decisions necessary for the operation of the Assembly, the enforcement of this Declaration and the care of the Commons. The Board of Directors shall be appointed or elected as follows:

(a) During Development Period. The Declarant shall appoint the initial officers and members of the Board and may continue to select the officers and Board members until the end of the Development Period. Such officers and Board members serve at the Declarant's pleasure and may be removed by the Declarant and a substitute selected. Without limiting in any way other assignment rights under this Declaration, the Declarant specifically reserves the right to assign its rights under this Section.

(b) Transition. The Declarant may voluntarily give up the right to appoint and remove some or all of the officers and members of the Board before termination of the Development Period, in which case the Declarant reserves the right to record an instrument specifying that certain actions of the Assembly or Board must be approved by the Declarant before they become effective.

(c) After Development Period. After the Development Period, elections shall be conducted in accordance with the Bylaws.

3.2.4 Record Keeping. The Board shall keep a record of all Board meetings and other Association meetings. For each action taken, the record should state the vote and a description of the action approved and, where applicable, the reasons why the action was considered necessary and a summary of the information on which the decision was based. Any Owner has the right to review the Assembly's records, at reasonable times, and can make copies or pay to have copies made for a reasonable fee. To the extent permitted by law, certain records may not be made available to Owners if genuine privacy considerations exist.

3.2.5 Additional Provisions. Additional provisions concerning the operation of the Assembly and the Board are contained in the Articles and Bylaws.

3.3 Commons

3.3.1 Generally. The Assembly shall maintain all Commons. In addition, the Assembly may be responsible for some Parcel maintenance.

3.3.2 Parking.

(a) Cross-easements. To encourage pedestrian activity and to make the most efficient use of parking area, all parking lots, whether privately owned or part of the Commons, shall be maintained by the Assembly as Commons and are hereby made subject to cross-easements for use by all Owners, tenants, guests and invitees, including business invitees unless the deed or

other instrument from the Declarant specifically provides otherwise. Spaces shall not be reserved for any particular business except as provided in Section 3.3.2(b).

(b) Reserved Spaces. The assignment of spaces to a particular business is prohibited in order to maximize shared usage of all spaces within Union Square. However, the Assembly may designate areas for deliveries and may assign spaces for short-term usage near such businesses as dry-cleaners or carry-out restaurants when deemed necessary for the most efficient operation of the Union Square. In addition, if so designated in the Design Guidelines, a small number of parking spaces within a Commercial or Live/Work Parcel that are accessed only from the rear of the building and that are intended for personal use by the business owner or resident of the building may be maintained by, and reserved for the private use of, the Parcel.

(c) Permitted Regulation. The Assembly may charge a fee for parking or limit the length of time a car may be parked, and may post speed limit or other traffic signs and take any other reasonable measures to discourage excessive speed and encourage safe driving within the Commons. The Assembly may require that owners or employees of businesses park in remote spaces during business hours.

(d) Vehicles. The Assembly may regulate or prohibit the parking within Union Square of trucks, buses or recreational vehicles, oversize vehicles, boats, vehicles which display advertising or the name of a business, and vehicles which are not in good running condition.

(e) Enforcement. The Assembly may enforce any violation under this section in accordance with Sections 6.2 and 6.3 and may tow or bar admittance to offenders. Any fees collected under this section shall be contributed to the general fund of the Union Square Assembly to offset expenses.

(f) Additional Services. As further provided in Section 3.4.1, the Assembly may, but is not required to, provide roving patrols, an information station or other visitor assistance.

(g) Limitation of Liability. The Assembly shall use reasonable judgment in providing services, maintaining the Commons and streets, and enforcing traffic control measures, but the Assembly and Declarant do not make any representation concerning security or safety or assume any liability for any loss or injury.

3.3.3 Common Landscaping, Sidewalks, Etc. The Assembly shall maintain any landscaping or signage that is part of the Commons and may maintain as Commons the street trees and any landscaping between the sidewalk and the street, even if located within the public right-of-way or on a Parcel. The Assembly may also maintain sidewalks and other portions of privately-owned property that are designed and approved under the design review process for use by all Owners. An easement is hereby reserved for such maintenance, including an easement to use water outlets on the side of buildings for cleaning sidewalks.

3.3.4 Lighting. The Assembly may purchase or lease, or lease to purchase, lighting for the Commons from the local utility. Alternatively, the Assembly may enter into such agreements

with the Declarant or other entity if the lighting equipment to be provided meets the requirements of the Design Guidelines. Any such agreement shall be on reasonable terms.

3.3.5 Trash Collection. The Assembly may arrange for trash collection and may provide shared dumpsters for some or all of the Parcels. The Assembly may require some or all of the Parcels to provide their own dumpster service. In particular, restaurants and other uses with unusual requirements may be required to provide their own services.

3.3.6. Contracts. The Assembly may contract with any party, including the Declarant, for the performance of all or any portion of the management of the Assembly and its maintenance and repair obligations. The cost of the contract shall be included within the General Assessment, Special Assessment or Individual Parcel Assessment as applicable. Any contract entered into by the Declarant with a utility company, insurer or other provider on the Assembly's behalf, before or after creation of the Assembly, may be assigned to the Assembly.

3.3.7 Limitation. The Assembly shall use reasonable judgment in maintaining and regulating the Commons, but neither the Assembly nor the Declarant makes any representation or assumes any liability for any loss or injury. The Declarant and the Assembly make no representations concerning security and shall not be liable in any way for failure to provide services or quality of such services.

3.3.8 Damage or Destruction of Commons by Owner. If any Owner or any of his guests, tenants, licensees, agents, employees or members of his family damages any of the Commons as a result of negligence or misuse, the Owner hereby authorizes the Assembly to repair the damage. The cost of repair shall be the responsibility of that Owner and shall become an Individual Parcel Assessment payable by the responsible Owner. The Assembly may, but is not required to, seek compensation for damage from the guest, tenant or other party who caused the damage, in which case the Owner shall be jointly and severally liable. Owner shall not be liable for damage caused by a customer or client unless Owner contributed to the cause of the damage.

3.4 Other Services

3.4.1 Additional Powers. The Assembly may offer to Owners any service that it deems will benefit Union Square, whether due to cost savings to the Owners, benefits of uniformity or efficiency in preventing traffic generated by multiple service providers. To the extent permitted by governmental authorities, the Assembly may, but is not obligated to, contract to provide the following services or engage in the following activities:

- (a) water, sewer, electrical, telephone, cable television or other utility services; garbage and trash collection and disposal;
- (b) insect and pest control; improvement of vegetation, fishing and wildlife conditions; lake and forestry management, pollution and erosion controls;
- (c) emergency rescue, evacuation or safety equipment; fire protection and prevention; roving patrols within Union Square, information center or other visitor assistance;

- (d) newsletters, electronic communication or other information services;
- (e) in addition to that provided under Section 3.3.3, maintenance of easement areas, public rights-of-way and other public or private properties located within reasonable proximity to the Union Square if its deterioration would affect the appearance of or access to the Union Square; and
- (f) any other service allowed by law to be provided by a community association organized as a not-for-profit corporation.

The Board may, by majority vote, initiate any of the above services. If requested by petitions signed by at least ten percent (10%) of the Owners, a membership meeting may be called and, if a quorum is present, the offering of the additional service under this Section 3.4.1 shall be repealed by majority vote of the Owners. For three years after such repeal, the Board may not reinstitute the service unless also approved by majority vote of the Owners.

3.4.2 Assessment. The Assembly shall determine whether such services are to be provided as part of the common expenses or assessed to the Parcel as an Individual Parcel Assessment. Certain services, including but not limited to dumpster or other trash collection, may be assessed to the affected Parcels based on a reasonable pro rata formula of relative use.

3.5 Insurance and Casualty

3.5.1 Review of Coverage. At least once each year, the Board shall review types of insurance and terms and limits of coverage for insurance held by the Assembly. In rare cases, if coverage becomes too expensive, the Assembly may make a decision to drop certain coverage or to take a higher deductible. In any event, the Board is expected to exercise the “prudent person” principle in determining how to deal with insurable risks of the Assembly.

3.5.2 Types of Insurance. The following are examples of insurance the Assembly shall consider:

(a) **Property Insurance.** The Board shall obtain property insurance for insurable improvements in the Commons unless the Board determines that the cost is unreasonable and the Board adopts a plan for self-insurance. If the Board obtains insurance, endorsements for fire and extended coverage, vandalism, malicious mischief, flood and windstorm shall be obtained where available at reasonable cost. Coverage shall be in an amount not less than that necessary to comply with any co-insurance percentage stipulated in the policy, or “agreed amount” insurance should be obtained.

(b) **Public Liability.** The Board shall obtain public liability insurance in such limits as the Board determines, insuring against liability arising out of, or incident to, the ownership and use of the Commons and any topographic conditions or water access located on or adjoining the Property. At the Board’s discretion, such coverage may include easements, such as walkways.

(c) Director Liability Insurance. The Board shall obtain liability insurance insuring against loss for actions taken by members of the Board, officers of the Association and advisory members in the performance of their duties. The Board shall also obtain fidelity insurance or bonding for Board members, officers and employees.

(d) Other Coverage. The Board shall obtain and maintain worker's compensation insurance if and to the extent necessary to meet the requirements of law and such other insurance as the Board may determine.

Whenever practical, insurance should be issued on a comprehensive liability basis and should contain a "severability of interest" endorsement, which prevents the insurer from denying the claim of an insured because of negligent acts of other insureds.

3.5.3 Mortgagee Requirements. Despite anything to the contrary in this Declaration, the Assembly shall obtain property insurance for insurable improvements on the Commons and shall obtain liability insurance on the Commons in amounts sufficient to meet FNMA, HUD and VA requirements if applicable.

3.5.4 Individual Insurance Coverage. Condominiums shall obtain insurance as required by their declarations and statute. Townhomes shall be insured as provided in the Declaration. The Assembly shall require other Owners to obtain property insurance, and such requirement shall be for full replacement value of improvements constructed on the Parcel. If requested by the Assembly, an Owner shall provide evidence of such insurance.

3.5.5 Repair and Reconstruction after Fire or Other Casualty.

(a) Commons. If fire or other casualty damages or destroys any of the improvements on the Commons, the Board shall arrange for and supervise the prompt repair of the improvements. The Board may restore the Commons to substantially original condition or may improve or modify the design or use. The reconstruction may be considered a substantial Capital Improvement in accordance with Section 4.1.5 only if and to the extent that it modifies the original purpose of the Commons, in which case insurance proceeds shall be considered as if they were assessments. The Board shall obtain funds for reconstruction first from the insurance proceeds, then from reserves for the repair and replacement of such improvements, and then from any Special Assessments that may be necessary after exhausting insurance and reserves.

(c) Parcels. If fire, severe weather, or other loss damages or destroys a building or any other improvements on a Parcel, the Owner is required to restore the property as follows:

(i) Clean-Up. The Owner of the Parcel shall immediately clear and secure the Parcel. If the Owner fails to clear and secure a Parcel within thirty (30) days after a loss, the Assembly may, in accordance with the provisions of Section 6.3.3, remove debris, raze or remove portions of damaged structures and perform any other clean-up the Assembly deems necessary to make the Parcel safe and attractive. The cost of such clean-up shall be assessed to the Owner as an Individual Parcel Assessment.

(ii) Rebuilding. Within eighteen (18) months of the loss, the Owner shall proceed to rebuild and restore the improvements and shall continue such improvement until completion without undue delay. The improvements shall be restored to the plans and specifications existing immediately prior to such damage or destruction, unless the Owner submits, and the ARB approves, other plans. If an Owner fails to begin rebuilding within the time allowed or abandons reconstruction, then the Assembly has the right but not the obligation to purchase the Parcel at eighty percent (80%) of fair market value in “as is” condition. The reduction in value is intended to allow the Assembly to market and resell the Parcel to an Owner who will restore the property.

Part IV:

Budget, Assessments

4.1. Union Square Assembly Budget

4.2 Obligation for Assessments

4.1 Union Square Assembly Budget

4.1.1 Assembly Expenses. The Board shall also prepare a budget for management of the Assembly, insurance, Commons maintenance and other expenses of the Assembly. The Assembly budget shall be assessed to all Owners and shall be divided according to Allocated Interest.

4.1.2 Individual Parcel Expenses. Certain services, including but not limited to dumpster or other trash collection, may be provided by the Assembly but are to be assessed to the affected Parcels as an Individual Parcel Assessment based on a reasonable pro rata formula of relative use in accordance with Section 3.4.2. Where such services can be reasonably estimated in advance, the Assembly may budget for such expenses and assess the cost in advance to the affected Parcels, including the establishment of reserves.

4.1.3 Budget Process.

(a) Fiscal Year. The fiscal year of the Assembly shall begin January 1 of each year and end on December 31 of that year, unless the Board selects a different fiscal year.

(b) Budget Items. The budget shall estimate total expenses to be incurred by the Assembly in carrying out its responsibilities. These expenses shall include, without limitation, the cost of wages, materials, insurance premiums, services, supplies and other expenses for the rendering of all services required by this Declaration or properly approved in accordance with this Declaration. The budget may also include reasonable amounts, as determined by the Board, for working capital for the Assembly and, as further provided in Section 4.1.4, for reserves. If the Commons are taxed separately from the Parcels, the Assembly shall include such taxes as part of the budget. Fees for professional management of the Assembly, accounting services, legal counsel and other professional services may also be included in the budget.

(c) Approval. The Board shall review and approve the budget prior to the beginning of the fiscal year for which it applies in accordance with the Bylaws. If General Assessments are to be increased to greater than one hundred fifteen percent (115%) of the previous year's General Assessment which was not a year in which General Assessments were guaranteed in whole or in part by Declarant, and petitions signed by at least ten percent (10%) of all Owners request review

within thirty (30) days after the budget is delivered to Owners, the Board shall call a membership meeting to present the budget and to answer any questions. After presentation, the budget shall be deemed approved unless the percentage required to transact business is present and the budget is rejected by a majority of the Owners present. If the budget is rejected, the Board shall approve a new budget within ten (10) days and send a copy to each Owner.

(d) Effect of Failure to Prepare or Adopt Budget. The Board's failure or delay in preparing or adopting the annual budget for any fiscal year, or review of the budget under sub-Section 4.1.3(c), shall not waive or release an Owner's obligation to pay General Assessments whenever the amount of such assessments is finally determined. In the absence of an annual Assembly budget each Owner shall continue to pay the assessment at the rate established for the previous fiscal period until notified otherwise.

4.1.4 Reserves and Deferred Maintenance.

(a) Generally. Although not required, it is recommended that the Assembly establish reserves for deferred maintenance, which are significant expenses that occur no more frequently than every five years. The Assembly may also establish contingency reserves for unpredictable expenses, such as storm-related clean-up and damage to landscaping. If reserves are insufficient for deferred maintenance and/or unpredictable expenses, the Assembly shall levy a Special Assessment when these major expenses arise. Costs which recur more frequently or which are less expensive can be handled as an ordinary expense, although reserves may be established for these costs as well.

(b) Using Reserves. When deferred maintenance is required to be performed and cannot be covered as an ordinary expense, the Board shall authorize use of the appropriate reserve fund. If specifically authorized by two-thirds (2/3) vote of the Board, reserves set aside for one purpose may be used for another purpose.

(c) Calculating Reserves. The amount of reserve required is calculated using the life expectancy of the item, its replacement cost, and the amount of money already in the fund. Once the amount of the reserve is determined, the reserve funds should be included in the budget and funded each year from General Assessments.

(d) Investing Reserves. Although separated for the Assembly's internal bookkeeping purposes, the various reserve funds can be deposited in a single bank or investment account, to be invested in a prudent way. The reserves shall be kept in an account separate from the Assembly's operating account and shall require a minimum of two Board signatures to be accessed.

(e) Excess Reserves. If there is an excess of reserves at the end of the fiscal year, the Board may decide to reduce the following year's assessments for reserves or may, by a two-thirds (2/3) vote, assign all or part of the funds to a reserve for another purpose, or allocate the funds to the operating account. If the Board, by two-thirds (2/3) vote, determines that a reserve is

no longer necessary for its original purpose, it may assign all or part of the funds to a reserve for another purpose, or allocate the funds to the operating account.

4.1.5 Capital Improvements. The Board may authorize Capital Improvements and include the cost in the Budget. Any substantial Capital Improvement to the Commons approved by the Board must be ratified by a majority (51%) of the Owners. If the Owners approve the substantial Capital Improvement, the Board shall determine whether it shall be paid from General Assessments or by Special Assessment. A Capital Improvement shall be considered substantial if the cost to the Assembly of the improvement is more than six percent (6%) of the annual budget, or if, when added to other Capital Improvements for the fiscal year, totals more than ten percent (10%) of the annual budget. However, any repair or replacement of existing improvements with materials of similar price and utility is not a Capital Improvement. Approval of the ARB is required for all Capital Improvements.

4.2 Covenants for Maintenance Assessments

4.2.1 Obligation for Assessments. The Declarant, for each Parcel owned within the Union Square submitted by this Declaration or Supplemental Declaration to the Declaration, hereby covenants, and each Owner of any Parcel by acceptance of a deed or other transfer instrument, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Assembly the following (to be known collectively as “Assessments”):

- (a) General Assessments for budgeted general Assembly expenses,
- (b) Special Assessments for the purposes provided in this Declaration, and
- (c) Individual Parcel Assessments for any charges particular to that Parcel.

Each Owner also agrees to pay a late fee and interest, as established by this Declaration and the Executive Board, and cost of collection when delinquent, including a reasonable attorney’s fee whether or not suit is brought. Upon default in the payment of any one or more installments, the Executive Board may accelerate the entire balance of such Assessment, which shall be declared due and payable in full.

4.2.2 General Assessments.

(a) Establishment by Board. The Board shall set the date or dates such assessments become due and may provide for collection of assessments annually or in monthly, quarterly or semiannual installments.

(b) Date of Commencement. The annual General Assessments shall begin on the day of conveyance of the first Parcel to an Owner other than the Declarant. The initial Assessment on any Parcel subject to assessment shall be collected at the time title is conveyed to the Owner. During the initial year of ownership, each Owner shall be responsible for the prorated share of

the annual General or Special Assessment charged to each Parcel, prorated to the month of closing.

4.2.3 Special Assessment. In addition to the General Assessment, the Board may levy in any fiscal year a Special Assessment as follows:

(a) Capital Improvements. A Special Assessment may be levied for a Capital Improvement. If the Capital Improvement is considered substantial, it must first be approved by Owners in accordance with Section 4.1.5.

(b) Emergency Assessment. By a two-thirds (2/3) vote, the Board may impose a Special Assessment for any unusual or emergency maintenance or repair or other expense which this Declaration or the law requires the Assembly to pay (including, after depletion of reserves, any unexpected expenditures not provided by the budget or unanticipated increases in the amounts budgeted).

The Board may decide whether to charge the Special Assessment as a single payment or to spread it over two or more years. The Board may give a reasonable discount for early payment appropriately tied to the cost of borrowing or investing money.

4.2.4 Individual Parcel Assessments. The Assembly may levy at any time an Individual Parcel Assessment against a particular Parcel for the purpose of defraying, in whole or in part, the cost of any special services to that Parcel or any other charges designated in this Declaration as an Individual Parcel Assessment.

4.2.5 Initial Contribution. At the closing and transfer of title of each Parcel to the first Owner other than the Declarant or a builder for sale to an Owner, and upon each subsequent resale, the Owner shall contribute to the Assembly three months' assessments or \$250, whichever is greater. This contribution may be used by the Assembly for the purpose of initial and nonrecurring capital expenses of the Assembly, for providing initial working capital for the Assembly and for other expenses, and shall not be considered as a pre-payment of assessments.

4.2.6 Effect of Nonpayment of Assessment; Remedies.

(a) Personal Obligation. All Assessments, together with any late fee, interest and cost of collection when delinquent, including a reasonable attorney's fee whether or not suit is brought (collectively, the "*Assessment Charge*") shall be the personal obligation of the person or entity who was the Owner of the Parcel at the time when the assessment was levied, and of each subsequent Owner. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of the Parcel.

(b) Creation of Lien. The Assessment Charge shall also be charged on the land and shall be a continuing lien upon the Parcel against which the Assessment Charge is made, which may be enforced upon recording of a claim of lien. This lien, in favor of the Assembly, shall secure the Assessment Charge which is then due and which may accrue subsequent to the

recording of the claim of lien and prior to entry of final judgment of foreclosure. Any subsequent owner of the Parcel shall be deemed to have notice of the Assessment Charge on the land, whether or not a lien has been filed.

(c) Suit for Payment; Foreclosure of Lien. The Assembly may bring an action at law against the Owner personally obligated to pay the Assessment Charge, or may foreclose the lien in a manner similar to foreclosure of a mortgage lien, or both. The Assembly, acting on behalf of the Owners, shall have the power to bid for an interest in any Parcel foreclosed at such foreclosure sale and to acquire, hold, lease, mortgage and convey the Parcel.

(d) Other Remedies. The Assembly shall have the right to assess fines and suspend the voting rights and right to use of the Commons by an Owner for any period during which any Assessment against his Parcel remains unpaid.

Notice to Purchasers concerning Unpaid Assessments

If there are any Assessments unpaid on the Parcel, you will automatically become liable for those Assessments when you accept a deed. **You should contact the Assembly before purchasing a Parcel to verify whether Assessments are owed.** You should also inquire about Special Assessments which may have been assessed but which are not yet owed.

The treasurer of the Assembly, upon request of any Owner or contract purchaser, will furnish a certificate stating whether assessments are paid to date by that Owner and whether any Special Assessments have been levied. Such a certificate may be relied upon by a good faith purchaser or mortgagee. Alternatively, the Board may delegate to the Assembly's management company the responsibility for preparing and executing such certificates.

Part V:

Design Review

- 5.1 Design Guidelines
- 5.2 Review Process for Original Construction
- 5.3 Review Process for Modifications
- 5.4 Enforcement

5.1 Design Guidelines

5.1.1 Design Guidelines. The Design Guidelines are located and maintained at the offices of the Declarant and Contingent Declarant and form the basis for review and approval of proposed construction improvements and modification of previously approved and constructed improvements on each and all of the Parcels in Union Square.

5.1.2 Permitted Uses. Permitted uses for Parcels, which may include residential use, civic use, retail, office, restaurant or other commercial use or a mixture of uses, shall be determined based on the Design Guidelines. At the Declarant's discretion, the Declarant may record the determination of permitted uses at any time up to and including the time of conveyance of the Parcel to someone other than the Declarant. Uses may be revised by modification of the Design Guidelines in accordance with Section 5.1.3; however, no such modification shall prohibit a legally existing use without the Owner's consent.

5.1.3 Modification of the Design Guidelines. The Declarant may revise any part of the Design Guidelines during the Development Period. After the Development Period, the Board of Directors of the Assembly by two-thirds (2/3) vote may make modifications to the Design Guidelines. If requested by petitions signed by Owners representing at least ten percent (10%) of the Allocated Interests of the Assembly, a membership meeting may be called and, if a quorum is present, the modification to the Union Square Design Guidelines shall be repealed by a vote of the Owners representing a majority of the Allocated Interests present in person or by proxy.

5.2 Review Process for Original Construction

This Section applies to new construction, as the community is being shaped and formed. The rights in this Section are reserved to the Declarant during the Development Period. The Declarant shall form a Declarant's Design Review Board to review applications and advise the Declarant, but such a board would be separate from the Architectural Review Board, or ARB,

described in Section 5.4. After the Development Period, these rights are automatically assigned to the ARB.

5.2.1 Construction Subject to Review.

(a) Approval Required. All modifications and improvements to the undeveloped Parcel, including without limitation clearing, grading, building construction, paving and landscaping, must be approved by the Design Review Board. No tree or land clearing or grading or any construction is permitted on any Parcel until the Design Review Board has reviewed and approved construction plans and specifications.

(b) Modifications. Once a plan is approved, any modification to that plan prior to or during construction must also be reviewed and approved by the Design Review Board. Any modification within two years of the receipt of a Certificate of Completion and Release as described in Section 5.2.5, including without limitation the addition of any landscaping, fence or other improvements, shall be considered part of the original construction, unless the Development Period has ended or the Design Review Board declines review, in which case the improvement shall be subject to Section 5.4.

5.2.2 Basis for Decision. Applications shall be approved or denied based upon compliance with the provisions in the approved Union Square at South Elm Master Plan, as revised, the Union Square at South Elm Design Guidelines, April 15, 2014, as revised, the Union Square at South Elm Green Standards, April 15, 2014, as revised, City of Greensboro zoning and development ordinances and regulations, the Brownfields Agreement between the Redevelopment Commission of Greensboro and the North Carolina Department of Environment and Natural Resources, the City of Greensboro Downtown Design Manual, the South Elm Street Redevelopment Plan (for consistency of intent), the Master Development Agreement between the Redevelopment Commission of Greensboro and South Elm Development Group, LLC, the High Point/Lee Street Corridor Plan (for compatibility), and overall quality of design. *If the Design Review Board rejects an application due to overall design quality the Design Review Board shall make suggestions for improving the design.* The Design Review Board may occasionally grant a variance based on existing topographical or landscape conditions, existing trees, accessibility needs or architectural merit. Any such variance must be in writing. Approval of a variance does not constitute a precedent for other applications.

5.2.3 Review Procedure.

(a) Applications. The Design Review Board may establish forms and procedures for the review of applications, including review costs and fees, if any, to be paid by the applicant. The Design Review Board may provide lists of approved materials and may allow for staff review and approval of routine or minor matters.

(b) Notification. The Design Review Board shall make best efforts to notify the applicant of its decision in a timely manner. However, a delay in reviewing an application shall not be deemed consent to construction unless the delay exceeds forty-five (45) days and the

applicant notifies Design Review Board in writing, receipt acknowledged by Design Review Board, that failure to respond within ten (10) days shall be deemed approval. If approval is given, construction of the improvements may begin.

(c) Construction; Inspection. All construction must comply with the submitted plans. The Declarant or its agent may inspect the property during construction but has no obligation to make any such inspection.

(d) Governmental Compliance. Owners are responsible for making sure that construction conforms to governmental regulations and all local building codes, along with applicable drainage, water conservation, erosion control, and stormwater detention requirements. If the Design Review Board notes noncompliance, the Owner will be required to make the necessary changes. However, the Design Review Board is not responsible for the construction's compliance with governmental requirements.

(e) Exception. Interior construction and modifications not affecting the external structure or appearance of any building are not subject to review. However, construction drawings may be required as part of the review process to assist in interpreting the design.

5.2.4 Approval of Architects, Builders.

(a) Architects. Architects must be approved by the Declarant before submitting plans. Approval shall be based on quality of past work, client satisfaction and understanding of, and willingness to work within, the Design Guidelines.

(b) Builders. Builders must be approved by the Declarant before building in the Property. Approval shall be based on willingness to build in accordance with approved plans and specifications, quality of past work, client satisfaction and financial history. Builders must agree to comply with construction regulations, to dispose of construction debris properly and to build in accordance with the approved plans and specifications. Builders may be required to post a deposit or surety bond for compliance and damages. Failure to comply may result in fines, forfeiture of the deposit and revocation of the right to build in the Property.

5.2.5 Completion. When the primary building and landscaping are completed in substantial compliance with the approved plans and specifications, the Design Review Board shall provide a letter outlining any areas of deficiency that need to be corrected. All fines and other enforcement shall be waived so long as the deficiencies are corrected within sixty (60) days. Upon correction of all deficiencies, the Owner may apply for a Certificate of Completion and Release in recordable form.

5.2.6 Liability. The Design Review Board is not responsible for compliance with governmental requirements or design or construction defects or use of materials affecting the safety or structural integrity of the building. Approval by the Design Review Board of an application, builder or architect shall not constitute a basis for any liability of the Design Review Board for failure of the plans to conform to any applicable building codes or inadequacy or deficiency in the plans resulting in defects in the improvements, or for the performance or quality of work of

any builder or architect approved by it, or for non-compatible or unstable soil conditions or soil erosion, or any other condition or event.

5.2.7 End of Development Period. After the Development Period, all of the Design Review Board's functions under this Section 5.2 shall be automatically assigned to the ARB established under Section 5.4. The Declarant may assign all or some of these rights sooner but is not required to do so. Any Owner who owns a Parcel at the time of the termination of the Development Period but who has not yet constructed a building shall be required to obtain approvals from the ARB in the same manner as previously performed by the Design Review Board.

5.3 Time Limit for Original Construction

5.3.1 Construction Time Limit.

(a) Requirement. Owner shall begin construction of the primary building on the Parcel no later than the Required Commencement Date and diligently pursue construction until completion, including landscaping. This agreement is part of the consideration Owner has paid for the Parcel. Owner must submit plans and begin the architectural review process in sufficient time to begin construction on time.

(b) Required Commencement Date. Unless otherwise specified on the deed or other recorded instrument executed by Declarant, the "*Required Commencement Date*" shall mean six (6) months from the date of the deed conveying the Parcel to the Owner or the Owner's predecessor in title.

(c) Start of Construction. Construction shall be considered to have begun when the clearing of the building site is begun or laying the foundation is begun, whichever is first.

(d) Continuous Construction. Failure to make significant progress during any thirty-day period or to complete the primary building within eighteen (18) months from the start of construction shall be considered a failure to diligently pursue construction under (a), except in the case of extreme material shortages, extreme weather conditions or other significant matters beyond the builder's control.

(e) Holder of Rights. The right to enforce this Section 5.3 is held originally by the Design Review Board and the Declarant, who may assign these rights at any time to the ARB or to the Assembly.

(f) Completion, Release of Restriction. Upon completion of a primary building in accordance with this section and completion of all required landscaping and other improvements, an Owner may apply to the Design Review Board for a "Certificate of Completion and Release" in recordable form which shall satisfy and release Owner and Parcel from the requirements of Sections 5.2 and 5.3. Construction of an outbuilding without construction of a primary building fails to satisfy this requirement.

5.3.2 Resale Restriction. If Owner has not constructed a primary building on the Parcel in accordance with approved plans and specifications prior to reselling the Parcel, the Parcel shall remain subject to the requirements and remedies set out in this Section 5.3. The requirement to begin construction and timely complete construction shall continue to run from the original deed.

5.3.3 Right of First Refusal. If Owner has not constructed a primary building on the Parcel in accordance with approved plans and specifications prior to offering the Parcel for sale, Owner shall notify Declarant in writing of Owner's intent to market the Parcel, and shall also notify Declarant in writing of any offer Owner has received and intends to accept for purchase of the Parcel. In the event of such a proposed sale, Declarant shall have a right of first refusal to repurchase the Parcel on the same terms and conditions as Owner intends to sell. Declarant shall have five (5) business days from receipt of Owner's written notice to notify Owner whether Declarant will exercise its right. If Declarant does not exercise its right, then Owner may sell the Parcel to another purchaser, but only for the same price and terms offered to Declarant. If Owner does not consummate that sale, Declarant's right of first refusal applies to all subsequent offers. Declarant's right of first refusal shall automatically terminate when Declarant no longer has any Parcels for sale in the Property or in the remainder of the Master Plan Area.

5.4 Review Process for Modifications

5.4.1 Union Square Architectural Review Board.

(a) Establishment. The Board of the Assembly shall establish an Architectural Review Board ("ARB") to review modifications of existing improvements under this Article. Members of the Board may sit on the ARB. To the extent reasonably possible, the ARB shall include one or more architects, designers, builders or other professionals with an interest in design. The ARB may employ personnel or contract with individuals or companies as necessary to assist in the review process.

(b) Procedures. Plans and specifications for review shall be submitted in the form and number required by the ARB. The ARB may provide lists of approved materials and may allow for staff review and approval of routine or minor matters.

(c) Fees. The Board shall set the ARB's review fees to cover all or part of the expected cost of its operation and shall fund any deficit. Fees shall not be intended to create a surplus, other than an ordinary operating capital fund for the ARB to which any excess fees shall be contributed.

(e) Inspection. The ARB or its agent may inspect the Parcel and improvements thereon throughout construction but has no obligation to make any such inspection.

5.4.2 When Approval Required. Review is not required to repaint or to replace components with duplicates of those originally approved, unless the ARB has previously notified the Owner

that the component will need to be modified upon replacement. The ARB shall maintain a registry of such notifications, indexed by address and by the name of the Owner to whom the notice was originally given, so that any purchaser of a Parcel may check to see if such notice has been given. Any other modification of the main building, outbuilding, signage, landscaping and all other parts of the Parcel visible from outside the Parcel must be approved in advance of performance of any work. Once construction begins, all construction must comply with the approved plans and specifications, and any changes to the plans must be reviewed and approved.

5.4.3 Standard for Review.

(a) Generally. Applications are approved based upon compliance with the Design Guidelines in effect at the time of the submittal, compatibility with surrounding Parcels and Commons and overall quality of design. The ARB may also consider other factors, including purely aesthetic considerations, so that it may require changes to a plan to improve its appearance even if the design meets the technical requirements of the Design Guidelines. If the ARB rejects an application due to overall design quality, despite compliance with Design Guidelines, the ARB may make suggestions for improving the design.

(b) Variances. The ARB may grant a variance from Design Guidelines based on existing topographical or landscape conditions, accessibility needs or architectural merit, but the granting of such a variance shall not be deemed a precedent for other variances. All variances shall be in writing.

(c) Tree Protection. The cutting, removal or intentional damage of existing trees (including excessive pruning or failure to use due care with equipment or when removing other trees permitted to be removed) is strictly regulated under Design Guidelines.

(d) Governmental Compliance. Owners are responsible for making sure that construction conforms to governmental regulations and all local building codes. All plans must comply with applicable drainage, water conservation, erosion control and stormwater detention requirements. If the ARB notes noncompliance, the Owner will be required to make the necessary changes. However, the ARB is not responsible for compliance with governmental requirements.

(e) Development Period. During the Development Period, all applications also require approval by the Declarant.

5.4.4 Builders. The ARB may establish a review and approval process for builders and other contractors. Approval shall be based on willingness to build in accordance with approved plans and specifications, quality of past work, client satisfaction and financial history. Builders must agree to comply with construction regulations, to properly contain and dispose of construction debris, and to build in accordance with the approved plans and specifications.

5.4.6 Limitation. The ARB and its inspectors are concerned primarily with aesthetic considerations, are not responsible for compliance with governmental requirements or design or

construction defects or use of materials affecting the safety or structural integrity of the building. Approval by the ARB of an application shall not constitute a basis for any liability of the Declarant, or members of the the ARB, Board of Directors or the Assembly for failure of the plans to conform to any applicable building codes or inadequacy or deficiency in the plans resulting in defects in the improvements, or for the performance or quality of work of any contractor or architect approved by it, or for non-compatible or unstable soil conditions or soil erosion, or any other condition of the Union Square parcels or improvements.

5.5 Enforcement

5.5.1 Generally. If any construction or installation is begun which has not been approved or which deviates from approved plans and specifications, the Declarant (for original construction) or the Assembly (for modifications) may approve any of the following actions:

- (a) Seek an injunction requiring the Owner to immediately stop construction and remove or correct any improvements that are not in compliance with approved plans;
- (b) Require the Owner to resolve the dispute through binding arbitration;
- (c) Bring suit seeking other remedies, including any combination of damages, specific performance, declaratory decree and/or permanent injunction or other remedy at law or in equity.

If the Declarant or Assembly brings suit and the court finds that the construction was not approved or that the construction deviated from the approved plans or specifications, then the Declarant or Assembly as applicable shall also be awarded reasonable attorney's fees and costs, even if the relief requested is not granted.

5.5.2 Deposit, Fines. The Declarant (for new construction) or Assembly (for modifications) may require the builder or Owner to post a deposit or surety bond from which the Declarant or Assembly as applicable may deduct fines for failure to comply with the approved plans and specifications, tree regulations, and rules for builder conduct. The collection of a fine shall not in any way diminish the available remedies at law or equity.

5.5.3 Tree Protection. Improper cutting, removal or intentional damage to existing trees is subject to fines as set by the Declarant or Assembly as applicable, plus a requirement that the tree be replaced with one or more of approved species and size.

5.5.4 No Waiver. Failure to enforce any provision of this Declaration, the Design Guidelines or construction rules shall not be deemed a waiver of the right to do so at any time thereafter.

Part VI: Commercial Uses

- 6.1 Covenants and Restrictions
- 6.2 Dispute Resolution Committee
- 6.3 Enforcement
- 6.4 Merchants' Council

6.1 Covenants and Restrictions

6.1.1 Use Restrictions. No Parcel lying and being in Union Square shall be used for any of the following purposes, which restrictions shall run with the land and be binding upon Owner, its successors and assigns:

- (a) Dry-cleaner, except that pick-up service shall be permitted if no dry-cleaning is performed or cleaning chemicals are used on site;
- (b) Nightclub, except that nightclubs incidental to a permitted use such as a hotel or restaurant shall be permitted;
- (c) Place of religious worship;
- (d) Automobile repair shop, or any business servicing motor vehicles in any respect, including, without limitation, any quick lube oil change service, tire center, gasoline or service station or facility or car wash;
- (e) Billiard parlor or pool hall, except that pool or billiard tables incidental to a restaurant use shall be permitted;
- (f) Sales office or showroom for automobiles, or other vehicles;
- (g) A Pornographic Use, as hereafter defined;
- (h) Pawn shop;
- (i) Off-track betting parlor, bingo hall, "sweepstakes" establishment, or other gaming establishment, except that sale of lottery tickets, incidental to a permitted use, shall be permitted;
- (j) Funeral parlor;
- (k) Retail establishment of the kind known as a "Head Shop," which sells drug-related paraphernalia;
- (l) Massage parlor, although massages provided as part of the business of a health club or day spa shall be permitted;
- (m) Flea market;
- (n) A Noxious Use, as hereinafter defined.

"Pornographic Use" shall include, without limitation, a store displaying for sale or exhibition more than a *de minimis* quantity of books, magazines, or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily

scientific or educational, or a store offering for exhibition, sale, or rental more than a *de minimis* quantity of videos or other medium projecting, transmitting or reproducing, independently or in conjunction with another device, machine, or equipment, an image or series of images, the content of which has been rated “X” or unrated by the Motion Picture Rating Association, or any successor thereto, primarily due to nudity and strong sexual content.

“Noxious Use” shall include, without limitation, a use which emits or results in strong, unusual or offensive odors, fumes, dust or vapors, is a public or private nuisance, emits noise or sounds, which are objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition.

6.1.2 Real Estate Offices. The Declarant reserves the right to exclusive operation of real estate sales, rental or management offices within Union Square, which shall be considered a deed restriction for the entire Union Square and shall be part of the consideration for the sale of property within Union Square. No real estate sales, rental or management offices, whether for residential, vacation or commercial properties, may operate within Union Square without the express, written consent of the Declarant

6.1.3 Nuisances, Unlawful Use. No nuisance or immoral, improper, offensive or unlawful use shall be permitted to exist or operate on any Parcel. The Assembly may from time to time define and determine unacceptable uses. All laws, building codes, orders, rules, regulations or requirements of any governmental agency having jurisdiction shall be complied with, by and at the sole expense of the Owner.

6.1.4 Name of Business; Advertising.

(a) Review. The Assembly shall have the right to review in advance and approve the name, logo or any identifying symbols for signage and in displays to be used with the business.

(b) Use of Name “Union Square” or “Union Square at South Elm.” The name “Union Square” is a trade name owned by the Declarant. An Owner may use the name “Union Square” to describe the location of the business, and may advertise a business as being located “in Union Square at South Elm.” If requested by the Declarant, Owner shall accompany such use with a symbol or explanation concerning trademark or service mark registration of the name “Union Square at South Elm.” Owner may not use the name “Union Square” or “Union Square at South Elm” in any other manner without the express permission of the Declarant.

(c) Approval of Advertising. All advertising for the business to be conducted on the Parcel, whether for print, television, radio, handbills, outside sign or other media, shall be subject to the Assembly’s standards and regulations. The Assembly may prohibit or regulate soliciting or the distribution of handbills within Union Square.

6.1.5 Signage, Lighting. All signage and lighting is subject to architectural review under Part V of this Declaration. The Assembly may require that interior lights on the first floor in designated display areas be lit in the evenings until a designated time.

6.1.6 Business Operation.

(a) Appearance. The Assembly may regulate product displays and general decor. The entrance and interior of the business shall be kept immaculately clean and inviting in appearance at all times. Wall and floor coverings, displays, lighting and all other furnishings shall be maintained in first-class condition.

(b) Hours of Operation. The Assembly may regulate days and hours of operation, including both minimum and maximum days and times.

(c) Staff. All personnel who may be viewed by patrons shall be appropriately dressed, well-groomed, courteous and knowledgeable concerning the merchandise and store policies.

(d) Deliveries. The Assembly may regulate deliveries, including but not limited to time, frequency and location.

6.1.7 Leases.

(a) Parcels. The provisions of this Declaration, including but not limited to this Part VI, shall be deemed included in any lease of commercial space within Union Square. The Assembly shall have the right to review all Parcel leases in advance and may promulgate a standard form lease to simplify its review. If any tenant is in violation of these provisions the Assembly may enforce these provisions against the Owner, the tenant or both, and is granted the right as Owner's agent and attorney in fact in accordance with Section 6.3.4 to evict any tenant in violation of these provisions.

(b) Default. The Assembly may prohibit the leasing of any Parcel while the Owner is in default in the payment of Assessments; if the Parcel is leased in violation, the Assembly may attach rentals and may evict the tenant as if it were a tenant violation under Section 6.3.4.

6.1.8 Attractiveness and Safety of Parcels. Each Owner shall keep all parts of its Parcel in good order and repair and free from debris. All improvements must be properly maintained and repaired, including but not limited to repainting as necessary. The Assembly may regulate placement and maintenance of garbage and trash containers, and fuel or gas storage tanks, and other matters affecting the attractiveness or safety of Parcels. Each Owner shall be responsible for proper disposal of unusual waste, grease, cooking oils, hazardous or biohazardous waste. If a Parcel has its own dumpster, it must be properly screened, secured and, where appropriate, refrigerated or otherwise treated to prevent odors and pests. No obstruction to visibility at street intersections shall be permitted.

6.1.9 Pets. Pets may be kept on a Parcel but only if such pets do not cause an unsafe condition or unreasonable disturbance or annoyance within the Union Square. The Assembly reserves the right to designate specific areas within the Commons where pets may be walked and to prohibit

pets on other areas, to require pets to be on leash, to require collection and proper disposal of pet waste, and to restrict the rights of tenants to keep pets.

6.1.10 Rules and Regulations. The Assembly may from time to time adopt rules or amend previously adopted rules and regulations governing the details of the operation, use, maintenance and control of the Parcels, Commons and any facilities or services made available to the Owners. This right shall include without limitation the right to approve rental agents, contractors and sub-contractors who do business within Union Square. Rules and Regulations shall take effect immediately upon approval by the Board, or at a later date selected by the Board. If requested by Owners representing at least 10% of the Allocated Interests, a meeting of Owners may be called and any Rule or Regulation may be repealed by a vote of Owners representing a majority of the Allocated Interests present in person or by proxy. A copy of the Rules and Regulations adopted from time to time shall be furnished to each Owner.

6.2 Dispute Resolution Committee

6.2.1 Establishment. The Board shall establish a Dispute Resolution Committee to hear any complaints of violations of these Covenants or Rules and Regulations adopted by the Board. The primary goal of the Dispute Resolution Committee is not to punish but to conciliate and resolve problems. The Dispute Resolution Committee may suggest or approve dispute resolution agreements and withhold the requirement of paying a fine if the agreement is honored.

6.2.2 Complaints. The Board or any Owner may file a request with the Dispute Resolution Committee to hear an issue concerning possible violation of this Declaration or the Rules and Regulations. The Dispute Resolution Committee will notify the business owner who is believed to be in violation, as well as the Owner of the Parcel, if different, and set a convenient date for a hearing.

6.2.3 Hearing. The object of the hearing is to hear the various viewpoints and to attempt to reach an agreement that is acceptable to all parties. Sessions shall be conducted with tact, dignity and respect. The Dispute Resolution Committee has the discretion to decide if the complaining party should participate in the hearing.

6.2.4 Resolution. The Dispute Resolution Committee is to evaluate whether the business owner or Owner has caused an unreasonable disturbance or other violation, and if so, to help reach a resolution. If the parties reach agreement and the Dispute Resolution Committee approves the agreement, the agreement is to be summarized in writing and signed by the parties, including the Dispute Resolution Committee. The Dispute Resolution Committee has the right to consider whether the same problem has arisen in the past and whether the business owner has complied with previous agreements in evaluating the current agreement. If agreement is not reached, or if the parties do not comply with the agreement, or if the Dispute Resolution Committee determines by majority vote that a fine or suspension be imposed, the Dispute Resolution Committee is to make a report and recommendation to the Board for further action.

6.3 Enforcement

6.3.1 Fines and Suspension. If so recommended by the Dispute Resolution Committee, the Board has the right to assess fines up to the maximum allowed by law as that law may be amended from time to time, with no limit on the aggregate amount, and may restrict the business owner's use of the Commons for up to sixty (60) days or until the violation is remedied, whichever is longer. Fines shall be charged against the Parcel as an Individual Parcel Assessment. Any fines collected shall be contributed to the general fund of the Assembly. However, the primary goal of this Union Square Declaration is not to punish but to resolve problems. The Assembly may suggest or approve agreements and withhold the requirement of paying a fine if the agreement is honored.

6.3.2 Pets. If the Board finds that a pet causes an unsafe condition or unreasonable disturbance or annoyance or violates this Declaration or any of the Rules and Regulations concerning pets, the Board may require the business owner or Owner to take steps to cure or limit the offensive condition. If such steps are ineffective, if the business owner or Owner fails to cooperate or if the pet is considered to create an unsafe condition or unreasonable disturbance or annoyance, the Assembly may require that an Owner or business owner permanently remove the pet from the Parcel.

6.3.3 Corrective Action for Parcel Maintenance. If the Board determines that any Owner has failed to maintain any part of a Parcel (including the yard and any wall, fence, or building for which the Owner is responsible) in a clean, attractive and safe manner, in accordance with the provisions of this Declaration, Design Guidelines and applicable Rules and Regulations, the Board shall notify the Owner of its findings and may assess fines. If the violation continues for ten days after notice to the Owner, the Assembly shall have the right without liability to enter the Parcel to correct, repair, restore, paint and maintain any part of such Parcel and to have any objectionable items removed from the Parcel. The Board may reduce or eliminate the time for notice if it believes the condition creates a hazard. All costs related to such action are to be assessed to the Owner as an Individual Parcel Assessment.

6.3.4 Tenant Violations. If after notice to both the tenant and the Owner and opportunity for a hearing the Board determines that a tenant has violated this Declaration or Rules and Regulations, the Assembly may assess fines against the Owner. In addition, if the violation continues for ten days after notice to the Owner of the findings, or if the tenant materially violates the same covenant more than once in any twelve-month period, the Union Square Assembly shall have the right to evict the tenant. Each Owner by acceptance of a deed irrevocably appoints the Assembly as its agent and attorney-in-fact in such an eviction action. All costs related to such action shall be charged to the Owner as an Individual Parcel Assessment.

6.3.5 Additional Remedies. All remedies listed in this Section are non-exclusive and may be applied cumulatively. The Assembly shall also have the right to bring suit to enforce the covenants contained in this Union Square Declaration, including the right to an injunction.

6.4 Merchants' Council

6.4.1 Purpose. The Merchants' Council shall promote the Union Square for the mutual benefit of all businesses. Its responsibilities shall include advertising, seasonal decoration, special event programming and other promotional activities and all commercial signage for Union Square other than signs on individual businesses. All such signage and decoration shall be subject to review by the Union Square Architectural Review Board.

6.4.2 Organization. The Merchants' Council shall originally operate as a committee of the Assembly. However, with written consent of Owners representing a majority of the Allocated Interests, the Assembly may adopt bylaws for the Merchants' Council to operate as a separate entity, which may be incorporated or unincorporated.

6.4.3 Membership; Board of Directors. The Board of Directors of the Union Square Assembly shall define members of the Merchants' Council, who do not need to be Parcel Owners and shall include business owners and managers conducting businesses within Union Square, and shall determine the method of selecting its leadership. However, Merchants' Council bylaws may include a different method of defining membership and selecting a board of directors.

6.4.4 Funding. The Merchants' Council Board of Directors shall propose an annual budget to the Assembly, which may fund some or all of the Merchants' Council's activities. The Merchants' Council may also receive revenue from special events and services and from voluntary contributions.

6.4.5 Consent of Declarant. During the Development Period, adoption of bylaws and all actions of the Merchants' Council shall be subject to the Declarant's review and approval.

Part VII:

General Provisions

7.1 Modification of Commons

7.2 Amendment, Redevelopment and Termination

7.3 General Provisions

7.1 Modification of Commons

7.1.1 Capital Improvements. The Assembly may make Capital Improvements to the Commons and may modify the uses of the Commons. Expenses for substantial Capital Improvements must be approved in accordance with Section 4.1.5.

7.1.2 Purchase of Additional Commons. The Assembly may acquire additional real property to be owned as Commons. The decision to acquire additional Commons (other than that added by the Declarant), whether by purchase or lease or other means, shall be authorized by a two-thirds (2/3) vote of the Board of Directors. If the purchase or lease is costly enough to be considered a substantial Capital Expense, it must be approved as described in Section 4.1.5.

7.1.3 Sale or Lease for Community Benefit. Although it would be unusual, the Assembly may sell, donate or grant long-term leases for small portions of the Commons or exchange parts of the Commons for other property inside or outside the Union Square when the Board finds that it benefits the community in at least one of the following two ways:

(a) The conveyance is intended to benefit the community in ways other than the revenue, if any, to be derived from the transaction. *For instance, the Assembly may convey or exchange property if necessary to improve access to the Union Square or to improve utility service.*

(b) The revenue to be derived is significant and the use and appearance of the Commons is not significantly impaired. *For instance, the Assembly might sell or lease small amounts of space for cellular telephone transmission equipment if such equipment were not obtrusive.*

Any decision to donate, sell, exchange or lease any portion of the Commons must be approved by two-thirds (2/3) of the Board. A transaction for sale, exchange or lease for a term of more than one year, including all tenant renewal options, cannot be completed until thirty (30) days after notice to Owners. If requested by at least ten percent (10%) of the Allocated Interests of the Owners within the 30-day period, a meeting of Owners must be held following at least seven (7)

days notice and, if a quorum is present in person or proxy, the decision to purchase, sell, exchange or lease may be rescinded by majority vote of the Owners present. Any contract with a third party for the purchase, sell, exchange or lease of the Commons should be contingent upon this right of rescission, unless the Board has previously passed a resolution describing the intended transaction and giving 30-days notice.

7.1.4 Corrective Instruments. The Assembly, by approval of two-thirds (2/3) vote of the Board, may also execute corrective instruments, settle boundary line disputes and resolve other title matters concerning the Commons.

7.1.5 Dedication.

(a) Common Roads. The Declarant or Assembly shall have the right to convey title to or dedicate the Common Roads to the appropriate public agency or authority.

(b) Commons. All other Commons may be dedicated to the public by the Board upon consent in writing of two-thirds (2/3) of all Owners.

7.1.6 Condemnation. If all or part of the Commons is taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be paid to the Assembly. The Board shall have the right to act on behalf of the Assembly with respect to the negotiation and litigation of the taking or condemnation affecting such property.

7.1.7 Mortgage. The Assembly may mortgage the Commons provided that the funds secured are used for the benefit of the Assembly, including the payment of debt owed by the Assembly.

7.1.8 Other Conveyances. Except as specifically permitted by this Declaration, the Commons cannot be conveyed or used for commercial purposes without the approval of Owners representing two-thirds (2/3) of the Allocated Interests other than the Declarant, plus the consent of the Declarant so long as the Declarant has any Parcel for sale in the normal course of business.

7.2 Amendment and Termination

7.2.1 Amendment.

(a) Generally. Except as provided otherwise, this Declaration, including vested rights, may be amended at any time by an instrument signed by the president or vice president and secretary of the Assembly, certifying approval in writing by Owners representing sixty percent (60%) of the Allocated Interests. A meeting shall not be required to obtain such consents and the individual consents do not need to be recorded.

(b) Declarant. Any amendment during the Development Period shall require Declarant's consent. Rights reserved to the Declarant may not be amended at any time without the specific consent of the Declarant. The Declarant specifically reserves the absolute and unconditional right, at any time during the Development Period, to amend this Union Square

Declaration without the consent or joinder of any party (i) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or any other generally recognized institution involved in the guarantee or purchase and sale of home loan mortgages, (ii) to conform to the requirements of institutional mortgage lenders or title insurance companies, or (iii) to clarify the Declaration's provisions or correct errors.

(c) Limitation. Whenever any action described in this Union Square Declaration requires approval of greater than sixty percent (60%) of the Allocated Interests, amendment of that provision shall require the same percentage vote as would be required to accomplish that action directly.

(d) Recording. Any amendment shall take effect upon recording in the public records.

7.2.2 Duration; Termination. The covenants and restrictions contained in this Union Square Declaration shall run with and bind the Union Square and shall inure to the benefit of and be enforceable by the Declarant, the Assembly, and all Owners of any portion of the Union Square, their respective legal representatives, heirs, successors or assigns for twenty (20) years, and shall be automatically extended for each succeeding ten (10) year period unless an instrument signed by Owners representing ninety percent (90%) of the Allocated Interests in the Assembly shall have been recorded, agreeing to terminate the Union Square Declaration as of a specified date. This Union Square Declaration may also be terminated in either of the following ways:

(a) Consent. The Declaration may be terminated at any time by the consent in writing of Owners representing ninety percent (90%) of the Allocated Interests plus the consent of the Declarant if within the Development Period.

(b) Dedication of Commons. The Declaration may be terminated by consent in writing by Owners representing sixty percent (60%) of the Allocated Interests in the Assembly, if the Commons have been accepted for dedication or taken by eminent domain by the appropriate unit of local government (or, if alleys or footpaths are not accepted for dedication, they have been conveyed to the adjacent Owner, reserving an easement for continued use).

7.2.3 Rerecording. Unless this Declaration is terminated, the Assembly shall rerecord this Declaration or other notice of its terms at intervals necessary under North Carolina law to preserve its effect.

7.3 General Provisions

7.3.1 Assignment. Declarant may with the approval of the Redevelopment Commission of Greensboro assign all or any portion of its rights at any time for all or part of the Union Square to any successor or assigns, or to the Union Square Assembly.

7.3.2 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform and consistent plan for the development and operation of

Union Square as a high quality community. Italicized portions may be used as an aid to interpretation. However, if the italicized portion conflicts with the operative provision, the operative provision shall govern. Cross-references are intended for convenience and should not be used as a limitation on interpretation if incorrect.

7.3.3 Standard of Care. In addition to any specific provisions in this Declaration concerning maintenance of any Commons or Parcel, each Owner and the Assembly shall properly maintain the property for which it is responsible. The ARB may establish a standard of care or, if not so established, the standard of care shall be deemed to be the average level of care evident within Union Square. After notice and opportunity to cure, any Owner or the Assembly shall have the right to bring an action against the responsible person or entity to enforce this standard of care.

7.3.4 Enforcement of Declaration.

(a) Enforcement. Suit may be brought against any person, persons or entity violating or attempting to violate the provisions of this Declaration, either to restrain violation or to recover damages, and against his or its property to enforce any lien created by this Declaration. To enforce this Declaration or the Rules and Regulations, the Assembly, the Declarant or any Owner may bring an action for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity. The Board shall be empowered to bring suits on behalf of the Union Square Assembly.

(b) No Waiver. Failure to enforce any provision of this Declaration or the Rules and Regulations shall not be deemed a waiver of the right to do so at any time thereafter.

(c) Assembly's Legal Fees. Any and all costs, including but not limited to attorneys' fees and court costs, which may be incurred by the Assembly in the enforcement of any of the provisions of this Declaration, whether or not suit is brought, may be assessed as an Individual Parcel Assessment to the Owner against whom (or against whose tenant) such action was taken.

7.3.5 Notices. Any notice required to be sent to the Owner shall be deemed to have been properly sent when delivered in accordance with the Bylaws and applicable statute.

7.3.6 Gender and Number. The use of the masculine gender herein shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

7.3.7 Consent of Mortgagees.

(a) When Consent Required. This Declaration contains provisions concerning various rights, priorities, remedies and interests of Registered Mortgagees. Such provisions are to be construed as covenants for the protection of the Registered Mortgagees on which they may rely in making loans secured by a mortgage on a Parcel. Accordingly, no amendment or modification of this Declaration specifically impairing such rights, priorities, remedies or interests of a Registered Mortgagee shall be adopted without the prior written consent of Registered Mortgagees as provided in Section 7.3.7(b). This Section shall not be construed, however, as a

limitation upon the rights of the Declarant, the Assembly or the Owners to make amendments that do not adversely affect the specific rights granted to Registered Mortgagees.

(b) Percentage Required. Wherever consent of the Registered Mortgagees is required, it shall be sufficient to obtain the written consent of Registered Mortgagees holding a lien on a majority or more of all Parcels encumbered by a mortgage.

(c) Timely Response. Any such required consent shall be given promptly and shall not be unreasonably withheld. Any consent not given or denied within thirty (30) calendar days of receipt of request for consent shall be deemed given.

7.3.8 Invalidity. The invalidity of any part of this Declaration shall not impair or affect the validity or enforceability of the rest of the Declaration, which shall remain in full force and effect.

7.3.9 Severability. In the event any provision of any portion of this Declaration is held by any Court of competent jurisdiction to be invalid or unenforceable, such holding will not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provision or portion never been part hereof.

7.3.10 Law to Govern. This Declaration shall be construed in accordance with the laws of the State of North Carolina.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned does hereby make this Declaration of Covenants, Conditions, and Restrictions for Union Square and has caused this Union Square Declaration to be executed as of the day and year first above written.

SOUTH ELM DEVELOPMENT GROUP, LLC
a North Carolina limited liability company

By: Robert Chapman
Manager

ACKNOWLEDGMENT

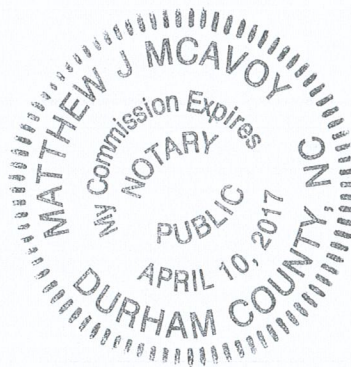
STATE OF NORTH CAROLINA)
) ss.
COUNTY OF DURHAM)

On April 1st, 2015, before me, a duly qualified and acting Notary Public, personally appeared Robert L Chapman, who acknowledged himself to be the Manager of South Elm Development Group, LLC, a North Carolina limited liability company, and that he, being authorized so to do, executed the foregoing instrument for the purposes and consideration therein contained, by signing the name of the limited liability company by himself as such officer.

In witness whereof, I hereunto set my hand and official seal.

Matthew J. McAvoy
Notary Public

My Commission Expires: April 10, 2017



REDEVELOPMENT COMMISSION OF GREENSBORO

By: 

Robert Enochs, Chairperson

Clinton E. Gravely, Vice Chair

Attest: 

Assistant Secretary



ACKNOWLEDGMENT

STATE OF NORTH CAROLINA)


) ss.

COUNTY OF GUILFORD)

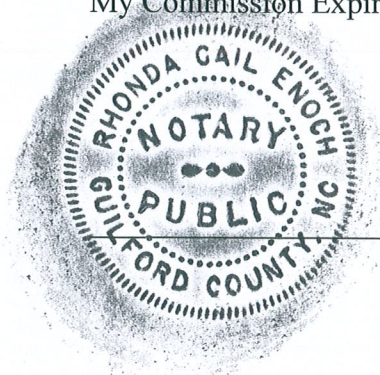
On April 9th, 2015, before me, a duly qualified and acting Notary Public, personally appeared *Dyan Arkin*, who acknowledged herself to be the Assistant Secretary of the Redevelopment Commission of Greensboro, and that she, by the authority duly given and the act of the Corporation, the foregoing document was signed in its name by its Chair, sealed with its corporate seal, and attested by her as Assistant Secretary.

↑
Vice

In witness whereof, I hereunto set my hand and official seal.


Notary Public

My Commission Expires: 8/3/2018



Schedule of Exhibits

Exhibit A, Legal Description, Initial Property of Union Square

Exhibit B, Master Plan Area Description of Union Square

Exhibit C, The Articles of Incorporation for The Union Square Assembly, Inc., and

Exhibit D, The Bylaws for The Union Square Assembly, Inc.

EXHIBIT A

LEGAL DESCRIPTION, INITIAL PROPERTY OF UNION SQUARE

All of that property lying and being in Morehead Township, City of Greensboro, Guilford County, North Carolina, more particularly described as follows:

All of Lot 1 and Lot 2 of that certain plat entitled "Recombination Plat Properties of Redevelopment Commission of Greensboro" as per plat thereof recorded in Plat Book 189, Page 4, Guilford County Public Registry, the descriptions therein contained being incorporated herein by reference.

Exhibit B

Master Plan Area of Union Square

1. All of that property located in Greensboro, North Carolina, having a total area of approximately 3.12 acres, bounded on the north by the right-of-way for West Lee Street, on the east by the right-of-way for South Elm Street, on the south by the right-of-way for West Bragg Street and on the west by the eastern right-of-way line of the Norfolk and Southern Railroad, all as described on that survey attached hereto marked as Exhibit A-1 and incorporated herein by reference; and
2. All of that property located in Greensboro, North Carolina, having a total area of approximately 3.508 acres, bounded on the north by the right-of-way for East Lee Street, on the east by the right-of-way for Arlington Street, and on the west by the right-of-way for South Elm Street and being designated at Lot 2 on the survey attached hereto marked as Exhibit A-2 and incorporated herein by reference.



REVISIONS			REMARKS		TYPE		JOB NO.		PROJECT		CITY OF GREENSBORO ENGINEERING DIVISION		G-1119	
NO.	DATE	BY			ROADWAY	UTILITY	AS BUILT	REVISED	BY			S. Elm St. Redevelopment Area 185, 193 and 191 S. Elm St. 702-714		ISSUED BY
					REPAIR	RECONSTRUCTION		OPENING	BY			185, 193 and 191 S. Elm St. 702-714		1 of 1

Exhibit C

State of North Carolina
Department of the Secretary of State

ARTICLES OF INCORPORATION
NONPROFIT CORPORATION

Pursuant to §55A-2-02 of the General Statutes of North Carolina, the undersigned corporation does hereby submit these Articles of Incorporation for the purpose of forming a nonprofit corporation.

1. The name of the corporation is: Union Square Assembly, Inc.
2. _____ (Check only if applicable.) The corporation is a charitable or religious corporation as defined in NCGS §55A-1-40(4).
3. The street address and county of the initial registered office of the corporation is:

Number and Street: 447 Arlington Street

City, State, Zip Code: 27409 County: Guilford
4. The mailing address if different from the street address of the initial registered office is: Does not apply.
5. The name of the initial registered agent is: Robert Isner
6. The name and address of each incorporator is as follows: Robert L. Chapman, III, 2525 Lanier Place, Durham, NC 27705
7. (Check either a or b below.)
a. ☐ The corporation will have members.
b. ☐ The corporation will not have members.
8. Attached are provisions regarding the distribution of the corporation's assets upon its dissolution.
9. Any other provisions which the corporation elects to include are attached.
10. The street address and county of the principal office of the corporation is:

Number and Street: 447 Arlington Street

City, State, Zip Code: Greensboro, NC 27409 County: Guilfords
11. The mailing address if different from the street address of the principal office is:

12. These articles will be effective upon filing.

This is the ____ day of _____, 20 ____.

Signature of Incorporator

Robert L. Chapman, III

Type or print Incorporator's name and title, if any

NOTES:

1. Filing fee is \$60. This document must be filed with the Secretary of State.

Revised January 2000

Form N-01

CORPORATIONS DIVISION

P. O. BOX 29622

RALEIGH, NC 27626-0622

Attachment:

1. Upon dissolution, the assets of the corporation will be distributed to the members in accordance with the provisions of the By-laws.
2. The corporation may engage in any lawful act or activity for which corporations may be organized under the Non-Profit Corporation Act of North Carolina. However, notwithstanding anything herein to the contrary, the corporation shall exercise only such powers as are in the furtherance of the exempt purposes of organizations set forth in the subsection of Section 501(c) of the Internal Revenue Code of 1954, as it may be amended from time to time. Provided further that no part of the net earnings of the corporation shall inure to the benefit of, or be distributable to its members, officer or directors; except that the corporation shall be authorized and empowered to reimburse reasonable out-of-pocket expenses incurred on behalf of the corporation, to confer benefits upon its members in conformity with its purposes, and to make distributions upon dissolution or final liquidation as permitted by the Non-Profit Corporation Act of North Carolina and Section 501 (c) of the Internal Revenue Code.

Exhibit D

BYLAWS OF UNION SQUARE ASSEMBLY, INC.

ARTICLE I DEFINITIONS

The following words and terms, as used in the Bylaws of Union Square Assembly, Inc., a North Carolina nonprofit corporation, shall, unless the context otherwise requires, mean and be defined as follows:

Allocated Interest is defined in Section 3.1 of the Declaration.

Assembly shall mean the Union Square Assembly Inc., a North Carolina nonprofit corporation, its successors and assigns, and said term may be used interchangeably with the term "Corporation."

Assessments shall have the meaning defined in Section 1.5 of the Declaration.

Board is the Board of Directors of the Assembly.

Commons. The "Commons" comprises real property or easement rights owned by the Union Square Assembly for the benefit of its members. The Commons also includes any improvements on that real property and any other property of any type specifically designated as the Commons. The Commons are not dedicated to the City of Greensboro for use by the general public.

Common Roads. The streets, parking lots and alleys within Union Square that are not dedicated to the public or privately owned shall be owned by the Assembly as part of the Commons.

Declarant and Contingent Declarant. The Declarant is South Elm Development Group, LLC, a North Carolina limited liability company, its successors and assigns, or any successor or assign of all or substantially all of its interests in the development of the Union Square unless the instrument conveying such interests provides otherwise. The Declarant may also be an Owner for so long as the Declarant is record owner of any Parcel. The Contingent Declarant is the Redevelopment Commission of Greensboro, which shall become the Declarant if Declarant is unable to fulfill its obligations as Master Developer of the South Elm Redevelopment Area (now known as Union Square) under the terms of the Master Development Agreement of June 12, 2013 between Declarant and the Redevelopment Commission of Greensboro, as amended.

Declaration is the Declaration of Covenants, Conditions and Restrictions for Union Square.

Development Period. The Development Period begins with the recording of the Declaration and continues for six months after the Declarant or its affiliates no

longer owns or controls any Parcel in the Master Plan Area. For the purposes of this definition, the term “*Parcel*” shall include all planned Parcels, whether or not platted.

Member. Every Owner of a Parcel subject to the Declaration shall be a mandatory Member of the Assembly.

Owner is the record owner, whether one or more persons or entities, of the fee simple title to any Parcel as defined by the Declaration.

Parcel. A Parcel is the smallest piece of real property (including air space) that may be separately conveyed and that has been made subject the Declaration. A Parcel may be a platted lot improved with, or intended to be improved with, an attached or detached mixed-use building or commercial building. If a property has been submitted to a condominium form of ownership, each condominium unit shall be considered a Parcel.

Union Square is that real property made subject to the Declaration plus any additional property added by supplemental declaration.

ARTICLE II MEETING AND VOTING BY MEMBERS

- (a) Weighted Votes. Each Owner shall have a vote as a Member of the Assembly, with votes to be weighted in accordance with Allocated Interests. Fractional votes are permitted.
- (b) Exercise of Vote. When more than one person holds an interest in a Parcel, all such persons shall be members. However, the number of votes for that Parcel shall not be increased, and the Owners must determine among themselves how the Parcel’s vote may be exercised. Corporations, partnerships and other entities shall notify the Assembly of the natural person who shall exercise its vote. To the greatest extent permitted by law, the Assembly may institute voting by electronic or other means.
- (c) Methods. Approval by a majority or other proportion of the Members refers to a vote based on Allocated Interests in accordance with this Article, either at a properly called membership meeting or through a voting procedure established under Section (d). Where the Declaration specifies consent in writing, or request in writing, by a majority or other proportion of Members, then the necessary number is based on the Allocated Interests represented by the total membership of the Assembly, and signatures may be collected without a membership meeting or other voting procedure.
- (d) Action without Meeting. Unless otherwise required by statute, the member-ship may approve any matter (specifically including the election of directors) by a written ballot procedure, which may be conducted by mail, e-mail, fax or other means, or by written consent without a meeting, without prior notice and without a vote. Voting or consents shall be in accordance with these Bylaws, the Declaration, and statute.

- (e) Annual Meeting. The Members shall hold an Annual Meeting during the first calendar quarter, at the same date, time and place as the Annual Meeting of the Board of Directors which shall be set by resolution of the Board and notice provided to all Members.

ARTICLE III BOARD OF DIRECTORS

Section 1. Board.

The affairs of the Assembly shall be managed by the Board of Directors. Except as specifically provided in the Declaration or statute, the Board has been delegated the power, and shall have the authority to act on behalf of the Assembly and to make all decisions necessary for the operation of the Assembly, the enforcement of the Declaration and the care of the Commons. The Board of Directors shall be appointed or elected as follows:

- (a) During Development Period. The Declarant shall appoint the initial officers and members of the Board and may continue to select the officers and Board members until the end of the Development Period. Such officers and Board members shall serve at the Declarant's pleasure and may be removed by the Declarant and a substitute selected at anytime. The Declarant specifically reserves the right to assign these rights during the Development Period.
- (b) Transition. The Declarant may voluntarily give up the right to appoint and remove some or all of the officers and members of the Board before termination of the Development Period, in which case the Declarant reserves the right to record an instrument specifying that certain actions of the Assembly or Board must be approved by the Declarant before they become effective.
- (c) After Development Period. After the Development Period, at the next Annual Meeting of the Members, the Members shall elect each Director to serve on the Board, the number of such Directors to be determined by the Members. The Directors need not be Members. The Directors shall serve until the next Annual Meeting of the Members at which time successor Directors shall be elected. Directors may serve successive terms. Any vacancy occurring may be filled by the Members at a special meeting called for that purpose and such Director shall serve for the unexpired term of the Director he is replacing.

Section 2. Compensation.

No director or officer shall receive any compensation for any service he may render to the Assembly. However, any director or officer may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 3. Indemnity.

Each director and officer of said Assembly, ³ past, now, or hereinafter in office and his

heirs, executors and administrators, shall be indemnified by said Assembly against all costs, expenses, and amounts or liability therefore, including counsel fees reasonably incurred by or imposed on him in connection with or resulting from any action, suit, proceeding or claim to which he may be made a part or which may be asserted against him, or in which he may be or become involved by reason of his acts of omission or commission, or alleged acts of omission or commission as such director or officer, or subject to the provisions hereof, any settlement thereof, whether or not he continues to be such director or officer, at the time of incurring such costs, expenses, or amounts and whether or not the action or omission to act on part of such director or officer, which is the asserted basis of such suit, action, proceeding or claim, occurred before or after the adoption of this By-law, provided that such indemnification shall not apply with respect to any matter as to which such director or officer shall be finally adjudged in such action, suit or proceeding, to have been individually guilty of willful negligence or misconduct, in the performance of duty and provided further that the indemnification herein provided shall, with respect to any settlement of any such suit, action, proceeding or claim, when, in the considered judgment of the Board of Directors of said Assembly, such director or officer shall not personally have gained directly from the transaction or transactions involved, has not been guilty of willful misconduct and such settlement and reimbursement appear to be for the best interests of said Assembly. Provided, however, that the Assembly will not indemnify any of the above named persons for expenses incurred in a criminal proceeding which results in a criminal conviction against such person. The foregoing right of indemnification shall be in addition to and not exclusive of any and all other rights as to which any such director or officer may be entitled under any By-law, agreement vote of proprietary members or otherwise.

ARTICLE IV MEETINGS OF DIRECTORS

Section 1. Regular Meetings.

The Board of Directors shall hold regular meetings at least once each calendar quarter with schedule, time and place predetermined by resolution of the directors. At the discretion of the Board the frequency of regular meetings may be adjusted as circumstances warrant. All regular meetings of the Board are open to any Member, Owner, or invited guest.

Section 2. Special Meetings.

Special meetings may be called by the chair of the Board or by a majority of the directors. The business to be addressed at such special meetings shall be limited to the subject for which it was called. All special meetings of the Board are open to any owner or invited guest.

Section 3. Notification of Meetings.

Appropriate advance notice of all meetings shall be given to all directors and designated alternated directors by telephone, mail or personal contact. Notice shall include date, time and place. In the case of special meetings, the notice should also include a brief statement as to the purpose of the meeting.

Section 4. Quorum.

The transaction of business at any Board meeting requires the presence in person of a quorum consisting of three-fifths (3/5) of the Directors.

Section 5. Valid Actions of the Board.

Except as otherwise stipulated in these Bylaws, a resolution decision, transaction or act is valid if so voted by a majority of the directors present at a meeting at which a quorum exists. However, such majority must represent at least 51% of the Allocated Interests.

ARTICLE V POWERS, DUTIES, & LIMITATIONS OF DIRECTORS

Section 1. Powers.

The Board of Directors shall have the power to:

- (a) Manage and control the affairs of the Assembly.
- (b) Elect and recall the officers of the Assembly.
- (c) Adopt and promulgate resolutions and procedures to achieve the purposes of the Assembly. Included shall be the power, except as specifically limited elsewhere in these Bylaws, to set dues, assessments and the basis on which they are computed.
- (d) Establish and supervise all committees.
- (e) Designate a banking institution or institutions as depository for the funds of the Assembly and also designate two (2) or more officers, including the treasurer, the signatures of any two (2) of which are authorized and required for withdrawals therefrom.
- (f) Acquire and dispose of property for the furtherance of Assembly purposes.
- (g) Invoke "Robert's Rules of Order" for the conduct of its meetings.
- (h) Adopt a corporate seal as the seal of the Assembly.

Section 2. Duties.

Together with those duties explicit and implied throughout these Bylaws, the Board shall:

- (a) Keep a complete record of all its acts and corporate affairs.

- (b) Provide oversight regarding all officers, committees, agents and employees of the Assembly and see that their duties are properly performed and in conformance with the purposes of the Assembly.
- (c) Oversee and approve an annual operating budget in conformance with Article VIII.
- (d) At intervals of no more than one (1) year, the Assembly shall cause to be published, for distribution to all Members, a summary of the financial status, actions, and efforts of the Assembly and such other matters as may be of mutual concern. In addition, an informational bulletin is to be published periodically, to keep Members abreast of current activity.
- (e) Provide for an annual audit of the financial records and transactions of the Assembly and any of its standing committees.

Section 3. Limitations.

The Board shall be subject to the following limitations:

- (a) It shall not take any actions that abridge the covenants, constraints, reservations, and restrictions set forth in the Declaration.
- (b) Investment of excess funds shall be limited to direct obligations of the United States of America or certificates of deposit insured by the FDIC, the FSLIC, or their successors.
- (c) Anticipated overruns of the total Assembly operating expense budget must have prior Board approval.
- (d) Any non-budgeted capital purchase or divestment or one-time operating expense valued in excess of two and one-half percent (2½ %) of the yearly budget or any expenditure or commitment to acquire or dispose of real property, requires approval by a majority of the Allocated Interests of the Members.

ARTICLE VI OFFICERS

Section 1. General.

The officers of the Assembly shall be, at minimum, a President and Secretary and if desired by the Board, a Vice President, a Treasurer and such other assistant officers as the Board may from time to time elect, all to serve for a term of one (1) year or until replaced by Board election. Terms of all officers and assistants shall normally begin at the first regular board meeting of the calendar year and end on the first regular Board meeting of the following calendar year. An officer may be elected from the Board and serve in such dual capacity. An officer need not be a director. An officer who is not also a director is not

entitled to initiate, second or vote on any motion or resolution. The President shall not hold more than one office under this Article; other offices may be held by the same person. Officers shall serve at the will of the Board. In the event an officer resigns or is incapable or unwilling to serve, the President, subject to Board's approval shall appoint an eligible person to replace the officer for the remainder of his term.

Section 2. Election.

The election of officers shall take place at the regular first quarter meeting of the Board of Directors. This meeting will serve as the Annual Meeting. Current board members, when qualified, may be elected to serve as officers.

Section 3. Duties & Powers:

The powers and duties of the officers are as follows:

- (a) **President:** The president of the Assembly shall serve as chair of the Board of Directors. The president shall be the general managerial officer of the Assembly except as may be otherwise designated or defined by an action of the Board. The president shall be vested with the powers and duties generally incident to the office of president of a nonprofit corporation except where specifically designated to the contrary by resolution of the Board or as otherwise set forth in the Bylaws.
- (b) **Vice-President:** In the absence of the President, or in the event of his inability or refusal to act as determined by the remaining members of the Board, the vice-president, if elected, is empowered to act as the president of the Assembly.
- (c) **Secretary:** The secretary of the Assembly shall keep the minutes of the meetings, business and other matters transacted. The secretary shall distribute, or cause to be distributed all required notices, publications and minutes. Copies of all minutes and meeting notices are to be made available to the directors on a timely basis. The secretary shall also maintain a register of directors, alternate directors and Assembly presidents. The secretary shall have custody of the corporate seal, records and also be responsible for all other duties incident to the office.
- (d) **Treasurer:** If elected, the treasurer shall have custody of the funds of the Assembly, collect moneys due, pay the obligations of the Assembly from such funds and perform such other duties as are incident to the office. At the discretion of the Board, the treasurer may be required to be bonded for such amount and under such conditions as the Board may see fit. The treasurer shall submit a periodic financial report as directed by the Board. Such report shall show receipts and expenditure performance against the detailed and approved budget as well as the current balances in all depositories.

ARTICLE VII COMMITTEES

The Board shall have the authority in its discretion to establish such committees, temporary

or on-going, as it deems appropriate to assist the Board in carrying out all activities and obligations it has on behalf of the Assembly. The Board shall have complete authority to appoint to any such committees such persons, whether Directors, Members or not, in such number as it determines in its sole discretion.

ARTICLE VIII ANNUAL ASSESSMENTS ON MEMBERS

Section 1. Assessments.

An annual assessment shall be levied annually on each Assembly Member and shall become payable in quarterly payments on the first business day of January, April, July, and October. The revenue so collected shall cover expenses for all activities undertaken in accord with the purposes of the Assembly.

The Annual Assessment must be approved each year by Board action, the first step being the approval of an enabling resolution at a regular meeting of the Board. The Annual Assessment is then submitted for approval at a subsequent regular meeting after a minimum interval of sixty (60) days.

Section 2. Determination of Assessments.

Member assessments for each fiscal year shall be calculated as follows:

The total budgeted expense and allocations to reserves for each fiscal year is determined. This total is reduced by the amount collected as deferred obligations and by any amount to be collected from all sources other than annual assessments. The reduced amount then represents the total revenue to be raised by annual assessments.

The total budgeted revenue to be raised shall be divided by the total number of Allocated Interests to determine the annual assessment per Allocated Interest.

Exceptions. For the purpose of Assessments and voting procedures, Assessments may be reduced in relation to the number of non-revenue producing properties without loss of good standing. The reduction in payment shall be treated as a deferred obligation. Non-revenue producing properties are defined as follows:

- (a) Properties currently under lien(s) for non-payment of the Owners' Assembly general assessment(s).
- (b) Properties on which a judgment is held.
- (c) Properties in bankruptcy.
- (d) Properties deeded to the Assembly.

ARTICLE IV GENERAL

The books, records and papers of the Assembly shall at all times, upon reasonable notice, be subject to inspection by any Member or a designated representative of any Member.

ARTICLE X AMENDMENTS

Amendments to these Bylaws may be amended by a two-thirds vote of the Board unless Member approval is required by the Declaration or by statute.

ARTICLE XI DECLARATION OF EMERGENCY

An emergency within the Union Square community may be declared at a special meeting of the Board at which a quorum is present. Under the conditions of such an emergency declaration, expenditures may be authorized solely for the alleviation of the cause of the emergency declaration. Such expenditure authorizations shall not require prior enabling resolutions or waiting periods provided that they are approved by a unanimous vote.