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JUDITH A. GIBSON REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

NORTHLAKE VILLAGE
DECLARATION OF
EASEMENTS AND RESTRICTIONS

COPY

THIS DECLARATION OF EASEMENTS AND RESTRICTIONS (this "Declaration") is made this 29th day of August, 2005, by Centdev Northlake, LLC, a North Carolina limited liability company ("Declarant").

RECITALS

A. Declarant is the owner of approximately fourteen (14) acres, located at the intersection of Smith Corners Boulevard and Panos Way in the City of Charlotte, Mecklenburg County, North Carolina and more particularly described on Exhibit A attached hereto and made a part hereof (the "Property").

B. The Property is subject to the provisions of the Declaration of Covenants, Conditions and Restrictions for Smith Corners, dated March 18, 1999 and recorded in Book 10330 at Page 893 in the Registry, by and among Panos/Smith Hotel Group - Reames Road, LLC, a North Carolina limited liability company ("Panos/Smith"), RI77, Inc. a North Carolina corporation ("RI77") and Speedway Boulevard, LLC, a North Carolina limited liability company ("Speedway"), as amended by the First Supplement to Declaration of Covenants, Conditions and Restrictions for Smith Corners, dated June 21, 1999 and recorded in Book 10562 at Page 40 in the Registry, by and among Panos/Smith, RI77 and Speedway, the Second Supplement to Declaration of Covenants, Conditions and Restrictions for Smith Corners, dated July 1, 1999 and recorded in Book 10595 at Page 824 in the Registry, by and among Panos/Smith, RI77 and Speedway, the Third Supplement to Declaration of Covenants, Conditions and Restrictions for Smith Corners, dated March 9, 2000 and recorded in Book 11146 at Page 192 in the Registry, by and among Panos/Smith, RI77 and Speedway, and the Fourth Supplement to Declaration of Covenants, Conditions and Restrictions for Smith Corners, dated November 10, 2003 and recorded in Book 16417 at Page 524 in the Registry, by and among Panos/Smith, Speedway and Statesville Road Holdings, LLC, a North Carolina limited liability company. (These documents are collectively hereinafter referred to as the Smith Corners CCR's".)

C. The Property is also subject to the Development Standards as required for the rezoning of the Property to the C-C District approved by Charlotte-Mecklenburg City Council on March 21, 2005 pursuant to Rezoning Petition No. 2005-33. The Development Standards are substantially set forth herein as Exhibit B.

D. Declarant intends to purchase, subdivide and develop the parcels for retail, restaurant, office or service uses, or to convey or ground lease one or more of those parcels to third parties for those purposes. Declarant and/or those third parties intend to construct buildings and related improvements ("Shopping Center") ~~all generally in accordance with the site plan of the Property as depicted on Exhibit C, attached hereto and made a part hereof (the "Site Plan"). The Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, all of which shall run with the Property and be binding on all Persons (as defined below) owning any right, title or interest in any Parcel (as defined below), their heirs, successors and assigns, and all of which shall inure to the benefit of each Owner (as defined below) of any Parcel, and its heirs, successors, and assigns.~~

E. The Declarant desires that the various portions of the Property be developed in conjunction with one another as an integrated shopping center in accordance with the Site Plan, and the various other governmental approvals to be obtained for the project by the Declarant. In addition, the Declarant desires to impose certain development and use restrictions on the Property. Declarant also ~~desires to create non-exclusive reciprocal easements over the areas on each parcel that are designed for the common use of all owners, to impose certain maintenance standards on each parcel, and to provide a mechanism for the sharing of the cost of maintaining certain common improvements with the Property. In order to accomplish the foregoing, the Declarant is executing and recording this Declaration.~~

NOW THEREFORE, the Declarant, by this Declaration, hereby declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, all of which shall run with the Property and be binding on all Persons (as defined below) owning any right, title or interest in any Parcel (as defined below), their heirs, successors and assigns, and all of which shall inure to the benefit of each Owner (as defined below) of any Parcel, and its heirs, successors, and assigns.

ARTICLE I

DEFINITIONS

Section 1. "Building Areas" shall mean all areas on the Property, identified as building areas on the Site Plan. The Building Areas may be modified by Declarant so long as they do not encroach upon any Tenant protected areas as defined in any lease that predates this Declaration.

Section 2. "Common Area Costs" shall mean the costs of operating and maintaining the Designated Maintenance Items, as provided in Article IV, Section 1.

Section 3. "Common Areas" shall mean all facilities and Improvements located on the Property that are designated for the general use in common, of the Occupants of the Property, including but not limited to, sidewalks, walkways, parking areas, roadways, traffic control signs or devices, entrances and exits, streetscape improvements, the off-site pylon sign, directional signs, plants (including trees, shrubs, flowers, ground cover and grass) and landscaped areas, benches, shelters, signs, banners, flags, lighting facilities (including light poles, fixtures, bulbs, tubes, ballasts, wiring and all equipment related thereto), common private utility lines (including sewer, water, electric, gas and communication lines), common storm drainage facilities (on-site and off-site), fountains and related plumbing, and sprinkler and irrigation systems.

Section 4. "Declarant" shall mean Centdev Northlake, LLC, a limited liability company organized under the laws of the State of North Carolina, or any successor entity, or any entity to which the rights of Centdev Northlake, LLC are assigned under the terms of Article VIII, Section 11.

Section 5. "Designated Maintenance Items" shall mean the following portions of the Common Areas, the cost of operating and maintaining which shall be shared by all Owners as provided in Article IV, Section 1: (a) all Improvements located within the off-site storm water detention facilities; (b) all backflow prevention equipment; (c) Entrance Signs; and (d) all common utility lines serving more than one Parcel that are not operated and maintained by a municipality or public utility company.

Section 6. "Drainage Easement Areas" shall mean those portions of the Property that are designated as such on the Site Plan to carry storm water runoff from the Improvements.

Section 7. "Entrance Signs" shall mean any free-standing monument or pylon signs or similar entry features constructed off-site as shown on the Site Plan.

Section 8. "Floor Area" shall mean the total floor area of any building Improvements on the Property designated for tenant or owner occupancy, including mezzanines and upper floors, if any, but excluding any unenclosed outdoor areas, such as covered terraces or porches. Floor Areas shall be expressed in square feet, and shall be measured to the center line of demising walls and to the exterior of outside walls.

Section 9. "Improvements" shall mean all buildings, outbuildings, underground utility and irrigation installations, slope alterations, roads, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, windbreaks, plants, trees, shrubs, poles, signs, loading areas and all other structures or landscaping improvements of every type and kind located on the Property.

Section 10. "Institutional Lender" shall mean any life insurance company, bank, savings and loan association, trust, real estate investment trust, pension fund, partnership or other organization or entity which regularly makes loans secured by real estate.

Section 11. "Occupant" shall mean and refer to any person or persons in possession of a Parcel, including Owners, lessees and sublessees from Owners, and their employees, guests, invitees and contractors.

Section 12. "Owner" shall mean any record owner of fee simple title to any Parcel, excluding any mortgagee (in which event the grantor shall remain the Owner). Notwithstanding the foregoing, (a) if a Parcel is owned by more than one person or entity as tenants in common, those parties shall designate one person or entity to act as "Owner" of that Parcel for the purposes of this Declaration; absent such a designation, the owner of the largest undivided interest shall be deemed the "Owner" of that Parcel; and (b) in a deed of conveyance executed in connection with a sale/leaseback transaction, the grantor/lessee may specify that it remains an "Owner" for purposes of this Declaration, and that designation shall be binding upon all other Owners so long as such grantor/lessee, or its successor or assignee, retains a leasehold interest in its Parcel.

Section 13. "Parcel" shall mean any portion of the Property which has been properly subdivided for any purpose, including conveyancing or ground leasing, or for real property tax purposes.

Section 14. "Person" shall mean any natural person, corporation, partnership, trust or other legal or commercial entity, or any combination thereof.

Section 15. "Proportionate Share" shall mean, for each Parcel, the fraction obtained by dividing the acreage of that Parcel by the total acreage of all Parcels within the Property.

Section 16. "Site Plan" shall mean the site plan of the Property attached hereto as Exhibit C.

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

~~Section 1. Property. The Property shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, charges and liens created by this Declaration. This Declaration shall not encumber any other real property owned by the Declarant outside the boundaries of the Property.~~

Section 2. Binding Effect. The terms and conditions of this Declaration shall run with the title to each Parcel, and shall be binding upon and inure to the benefit of, the Owner of each Parcel and its successors and assigns.

ARTIVCLE III

EASEMENTS AND COMMON AREAS

~~Section 1. Cross Easements for Ingress and Egress. Subject to the terms of this Declaration, each Owner shall have a perpetual non-exclusive easement to use all of the roadways, entrances and exits, drive aisles, sidewalks and similar Improvements designed for common use located within the Property as shown on the Site Plan, for pedestrian and vehicular ingress and egress, and other purposes for which those common Improvements are designed, without payment of any fee therefore, subject to the right of each owner to relocate the Common Areas on its Parcel from time to time in accordance with the provisions of Article VII, Section 3. No barriers, fences, or other obstructions shall be erected within the Property so as to interfere with the free flow of pedestrian and vehicular traffic between those portions of the Property from time to time devoted to vehicular roadways or pedestrian sidewalks; provided, however, that the foregoing provisions (and the provisions of Section 1(b) above) shall not prohibit the reasonable designation and relocation of traffic and pedestrian lanes. In addition, each owner may block traffic on its Parcel for the time necessary to prevent the creation of prescriptive easement rights, or as may be reasonably required for the purpose of repairing and replacing the roadways, sidewalks and parking areas on its Parcel. If possible, however, such action shall be taken on a day or at a time when the building Improvements on the Property would not otherwise be open for business.~~

Section 2. Parking Easement. Subject to the terms of this Declaration, each Owner shall have a perpetual non-exclusive easement to use the parking areas located on the Property for the parking of motor vehicles in the designated parking areas. In addition, nothing in this Section 2 shall be deemed to grant to the owner of any property outside of the Property any rights to use the parking areas located on the Property for the parking of motor vehicles except for the express purpose of patronizing the business(es) located thereon, nor shall it be deemed to grant any party the right to park motor vehicles on any portion of the Property not striped with parking spaces, such as roadways, entrances and exits, fire lanes and parking aisles.

Section 3. Utility and Other Easements. Subject to the terms of this Declaration, each Owner shall have a perpetual non-exclusive easement to install, use, maintain and replace all storm sewer, sanitary sewer, domestic water, fire protection water, natural gas, electric, telephone and other utility lines and facilities located or to be located within the Property, including those facilities (if any) shown and identified on the Site Plan, to serve or benefit the Improvements on its Parcel, subject to the following limitations:

- (a) All utility installations shall be underground, except for temporary overhead power lines installed during the construction of improvements on a Parcel which shall be removed promptly upon completion of construction, and except for the existing power lines.
- (b) The initial location of any utility lines shall be subject to the prior written approval of the Owner of the parcel under or across which the utility lines are to be installed, and in no event shall any utility line be installed within the Building Areas or under any building Improvements constructed within the Property.
- (c) Each Owner shall have the right to pave and landscape the surface within its Parcel over the utility lines, and to grant additional easements to third parties within the areas in which the utility lines are located, so long as such actions do not unreasonably interfere with the use and enjoyment of the easement rights created hereby.
- (d) To the extent that responsibility for such maintenance is not assumed by the appropriate public utility, (1) the maintenance of any utility line or facility located within the Property that serves only a single Parcel shall be the responsibility of the Owner of the Parcel served by that utility

line or facility, regardless of the location of that line or facility; and (2) and the maintenance of any utility line or facility located on the Property that serves multiple parcels shall be a designated Maintenance Item.

(e) Any Owner going onto the Parcel of another Owner to install or maintain utility lines shall perform such work in a manner to minimize any disruption of business on the Parcel on which the utility lines are located, and shall promptly repair at its expense any damage (including damage to paved or landscaped areas) caused by such installation or maintenance, so as to restore such Parcel to its original condition.

(f) Each Owner shall have the right to relocate the utility lines located on its Parcel at its expense if necessary for the development of Improvements on its Parcel, so long as the approval of the appropriate municipal utility department or public utility, if applicable, is obtained and arrangements are made for continued utility service to all other Owners benefited by the utility being relocated, and provided that no such relocation shall be undertaken during the months of November or December.

Notwithstanding the foregoing, each Owner (the "Dominant Owner") who installs, uses, maintains or replaces any utility lines under or across the Parcel of another Owner (the "Servient Owner") shall indemnify and hold the Servient Owner harmless from and against any and all claims, damages, losses costs and expenses, that may be caused or occasioned by the Dominant Owner, its tenants, contractors, agents or employees, in connection with its installation or maintenance work under this Section 3, and the Dominant Owner shall promptly discharge or bond (within thirty (30) days after receipt of notice of filing) any and all liens filed against the Servient Owner's Parcel or any portion thereof as a result of or relating to any installation or maintenance undertaken by or on behalf of the Dominant Owner. In addition, each dominant Owner shall indemnify and hold the Servient Owner and its successor in title harmless from and against all claims, damages, losses, costs and expenses that may arise as a direct result of any toxic or hazardous substance that the Dominant Owner causes by its action or the actions of its tenants, contractors, agents or employees.

Section 4. Easements for Minor Encroachments. It is the intent of the Declarant that all building Improvements on the Property be located wholly within the boundaries of each Parcel. Notwithstanding the foregoing, if any

Improvements otherwise permitted under the terms of this Declaration inadvertently encroach onto another Parcel by not more than three (3) feet, the Owner of the encroaching Improvements shall have an easement over the other Parcel to maintain the encroachment.

Section 5. Construction Easements and Staging Areas. Declarant shall have a temporary, non-exclusive easement over the entire Property for all purposes related to the development of the Property, including the construction of Improvements within the Common Areas. This easement shall include, without limitation, the right of vehicular and pedestrian ingress, egress, and regress, the right to park motor vehicles and to engage in construction activities for portions of the Property, including the movement and storage of all building materials and equipment. Declarant agrees that it will exercise its rights under this Section 5 in a manner that minimizes interference with the construction activities and the business operations, if any being undertaken by the Owner of any Parcel. Notwithstanding the above, the storage and placement of building materials, equipment, construction trailers and other items necessary for the construction of Improvements on any Parcel, whether owned by either Declarant or another Owner, shall be restricted to the boundaries of the Parcel on which such Improvements will be located.

Section 6. Easement for Maintenance. The management agent of Declarant shall have the right of access over each Parcel of the Property to the extent necessary for the performance of its obligations of maintenance, repair, or replacement of the Designated Maintenance Items, as provided in Article V, Section 3.

Section 7. Delegation of Use. The easements granted to every Owner in this Article III may be delegated by each Owner to its tenants, employees, contract purchasers, agents, contractors and invitees.

Section 8. Easements for Fire Protection, Law Enforcement, Emergency Services and Utility Line Maintenance. Subject to the terms of this Declaration, the City of Charlotte, Mecklenburg County and the public providers of fire protection, law enforcement, and emergency services shall have a perpetual non-exclusive easement to use all of the roadways, entrances and exits, drive aisles, sidewalks and similar Improvements designed for common use located within the Property.

Section 9. Easements for Utility Line Maintenance. Subject to the terms of this Declaration, the City of Charlotte, Mecklenburg County and the public providers of utility services shall have a perpetual non-exclusive easement to maintain and replace all sanitary sewer, domestic water, fire protection water, natural gas, electric, telephone and other utility lines and facilities located or to be located within the Property,

including those facilities (if any) shown and identified on the Site Plan, to serve or benefit the Improvements on its Parcel subject to the limitations set forth in Section 3 above.

Section 8. Easements and Property Rights Appurtenant to Parcel.

All easements and other property rights of Owners created in this Article III shall be appurtenant to each Parcel and shall run and pass with title to such Parcel.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Agreement to Pay for Maintenance. Each Owner shall, at its own expense, maintain, repair and replace, (including the payment of ad valorem property taxes and assessments thereon, as necessary, the Common Areas within its Parcel except for the maintenance, repair and replacement of the Designated Maintenance items which are set forth below. Further, the Declarant, and each subsequent Owner of any Parcel, by acceptance of a deed therefore (whether or not it shall be so expressed in such deed), are deemed to have agreed to all of the covenants contained in this Declaration and expressly to have agreed to pay a share, calculated as provided below, of all of the Common Area Costs. As used in this Declaration, the term "Common Area Costs" shall mean all of those costs associated with the maintenance and operation of the Designated Maintenance Items, included but not limited to the following.

- (a) The cost and expense of maintaining, repairing and replacing the Improvements located within the off-site areas that are maintained by the Smith Corners Owner's Association and proportionately shared among the properties located in Smith Corners pursuant to the Smith Corners CCR's.
- (b) The cost and expense of maintaining any common utility lines or facilities within the Property that serve more than one Parcel, to the extent that such maintenance is not undertaken by the appropriate municipality or utility company. This expense shall be proportionately shared by the benefiting Parcels.
- (c) For security or fire protection services or equipment legally required by the applicable jurisdiction, or if Declarant elects to provide such services, the cost of any security and traffic control services or fire protection services or equipment.

- (d) The cost of lighting, operating, insuring, maintaining, repairing and replacing all common identification signs on the Property or off-site, including but not limited to the Entrance Sign.
- (e) If Declarant engages a Management Firm, a management fee to the Management Firm in an amount not to exceed six percent (6%) of all other Common Area Costs.

~~Section 2. Payment of Assessments. The Owner of each Parcel shall pay to Declarant its Proportionate Share of Common Area Costs in each calendar year, in accordance with the provisions of this Section 2. The obligation of each Owner to pay a share of the Common Area Costs shall commence on the date that the building Improvements on its Parcel have been completed and opened to the public for business. Once the obligation of each Owner to pay its Proportionate Share of Common Area Costs under this Section 2 has commenced, such obligation shall not be affected by the subsequent closing of the building Improvements on its Parcel; provided, however, that if all buildings on any Parcel are destroyed or demolished, the obligation of that Owner to pay Common Area Costs shall terminate until a building on its Parcel has been rebuilt and re-opened for business.~~

On or before the date that the first building on the Property is completed and opened for business, and thereafter on or before January 1 of each year, Declarant shall prepare a budget of the Estimated Common Area Costs for the ensuing calendar year, and shall furnish a copy of that budget to each Owner, together with a calculation of that Owner's estimated Proportionate Share of Common Area Costs for the ensuing calendar year. This estimated annual charge shall be paid to Declarant in within thirty (30) days of receipt of an invoice therefore. Within one hundred and twenty (120) days after the end of each calendar year, Declarant will furnish to each Owner a statement showing in reasonable detail the actual amount of Common Area Costs incurred in the preceding calendar year, and the actual Proportionate Share of Common Area Costs payable by each Owner. If the estimated monthly payments made by an Owner in that calendar year are less than its actual Proportionate Share of Common Area Costs, the Owner shall pay the deficit to Declarant within thirty (30) days after the annual statement. If the estimated monthly payments made by an Owner in that calendar year are greater than its actual Proportionate Share of Common Area Costs, any surplus will, at the election of the Declarant, either be refunded to that Owner, or credited by Declarant against the monthly estimated payments thereafter coming due.

Section 3. Management Firm. Declarant may designate a management firm (the "Management Firm") from time to time to oversee and coordinate the

operation, maintenance, repair and replacement of the Designated Maintenance Items. The Management Firm, so designated, shall contract for and supervise such work, and shall pay the taxes assessed against the Drainage Easement Areas and the Roadway Easement Areas, and shall bill each Owner on behalf of Declarant for its Proportionate Share of such costs, calculated as provided in Section 2 above, no more frequently than monthly.

Section 4. Failure to Maintain. If any Owner (the "Defaulting Owner") fails to maintain its Parcel and the Improvements thereon in the condition required under Article V, then Declarant (or the Management Firm acting on behalf of Declarant) may undertake to maintain such area upon fifteen (15) days prior written notice to the Defaulting Owner, and the Defaulting Owner shall pay all costs and expenses of such maintenance to Declarant within ten (10) days after receipt of a detailed invoice for such costs and expenses.

Section 5. Effect of Nonpayment. Any amount due under the terms of this Declaration which is not paid within thirty (30) days after the due date shall bear interest from the due date at a rate of eighteen percent (18%) per annum or the maximum interest rate permitted to be legally charged under the laws of the State of North Carolina at the time of such delinquency, whichever is less, and shall be a charge on the land and shall be a continuing lien upon the parcel of the Defaulting Owner. In the case of co-ownership of a Parcel, all of the co-owners shall be jointly and severally liable for the entire amount of any such lien. Declarant (or the Management Firm acting on its behalf) may bring an action at law against any other Owner obligated to pay amounts due under the terms of this Declaration or may foreclose the lien against the Parcel, and interest, late payment fees, costs and reasonable attorney's fees of such action or foreclosure shall be added to the to the amount due. No Owner may waive or otherwise escape liability for its share of Common Area Costs or other charges provided in this Declaration by abandonment of its Parcel, by the closing of the Improvements on its Parcel, or by its non-use of the Common Areas.

Further, any lien created pursuant to this Section 5 may be enforced by a foreclosure of a lien for services as provided in Chapter 44A of the North Carolina General Statutes, or in any other manner permitted by law, at the election of Declarant (or the Management Firm acting on its behalf).

Section 6. Subordination of the Lien to Institutional Deeds of Trust. The liens provided for in Section 5 shall be subordinate to the lien of any first or second lien deed of trust on a Parcel or any Portion of the Property. The sale or transfer of a Parcel or any portion of the Property shall not affect any lien, but the sale or transfer of a Parcel or any portion of the Property that is subject to a deed of trust to which the lien is subordinate, pursuant to the foreclosure of such deed of trust or any proceeding in lieu of foreclosure thereof, shall extinguish such lien as to any amount which became due prior to such sale or transfer. No such sale or transfer shall relieve such Parcel from liability for any amount thereafter

becoming due or from the lien thereof and the liens provided for in this Article IV shall continue to be subordinate to the lien of those deeds of trust identified in the first sentence of this Section 6.

Section 7. Records and Audit. Declarant shall maintain detailed books and records of all costs and expenses incurred by it in the performance of its maintenance and repair obligations under this Article IV, for a period of at least twenty four (24) months following the end of each calendar year. Any Owner shall have the right to inspect and audit such books and records at the office of Declarant and/or the Management Firm during business hours upon five (5) days' advance written notice.

Section 8. Certificates. Declarant shall, upon demand and payment of a reasonable charge, furnish to any Owner a certificate in writing signed by an authorized officer of Declarant and/or the Management Firm setting forth whether the assessments against such Owner's Parcel have been paid to date, and if not, the amount due and owing. These certificates shall be conclusive as evidence for third parties as to the status of assessments against such Parcel.

ARTICLE V

MAINTENANCE STANDARDS AND PARKING LOT LIGHTING

Section 1. Maintenance Prior to Development. Until such time as buildings or other Improvements are constructed on its Parcel, each Owner shall maintain its Parcel as a seeded or landscaped area, shall keep the grass mowed to a height of six (6) inches or less, shall promptly remove all trash and debris and generally maintain its Parcel in a safe, neat and clean condition at all times.

Section 2. Maintenance following Development. Following construction of Improvements on its Parcel, each Owner shall maintain or cause to be maintained its Parcel in a safe, clean and attractive condition, and shall maintain and repair at its expense all Improvements on its Parcel (other than the Designated Maintenance Items) in order to keep the same in good condition and repair in compliance with then current zoning laws, building codes and other governmental regulations and in a condition substantially similar to that existing upon the initial completion of the Improvements. Such maintenance obligation shall include, without limitation, the following:

- (a) Keeping and maintaining the exterior of all buildings and all sidewalks, walkways, roadways and paved parking surfaces in a good, safe, clean and presentable condition.
- (b) Removing promptly, to the extent reasonably practicable, snow, ice, surface water and debris.

- (c) Keeping all directional signs, pavement signs and striping of paved areas distinct and legible, which shall include the obligation to resurface and restripe paved parking areas at least once every ten (10) years.
- (d) Repairing, replacing and renewing common area lighting, fixtures, and bulbs, tubes and ballasts therefore as may be necessary.
- (e) Periodically mowing (at least once every ten (10) days during the growing season), leaf blowing and fertilizing all grassed areas on its Parcel, including areas in the adjoining public rights of way (and/or Roadway Easement Areas) between the property line and the back of curb line.
- (f) Caring for, fertilizing, pruning and replanting all landscaped and planted areas within its Parcel, including areas in the adjoining public rights of way (and/or Roadway Easement Areas) between the property line and the back of curb line, and removing and replacing all dead or drying plants within thirty (30) days except when prevented by seasonal conditions (ie:middle of summer).
- (g) Maintaining all utility lines or facilities located within the Property to the extent required by Article III.
- (h) Keeping its parcel clean, orderly, sanitary and free from objectionable odors and from termites, insects, vermin and other pests.

If any Owner fails to maintain its Parcel or the Improvements thereon, or if the need for maintenance, repair or replacement of any portion of the Designated Maintenance Items is caused through the willful or negligent act of an Owner, its agents, employees, guests, tenants, invitees or designees and is not covered or paid for by a policy of insurance maintained by Declarant under Article VIII, in whole or in part, then Declarant (or the Management Firm acting on its behalf) shall have the right to enforce this covenant in the manner provided in Article IV.

Section 3. Maintenance of Designated Maintenance Items. The maintenance of the Designated Maintenance Items shall be the responsibility of Declarant, or the management Firm acting on its behalf, in the manner provided in Article IV above.

If Declarant or the Management Firm fails to maintain the Designated Maintenance Items, and such failure continues for a period of thirty (30) days after issuance of a notice by another Owner (the "Maintaining Owner") to Declarant and the Management Firm and to all other Owners,

specifying the nature of the default claimed, then the Maintaining Owner shall have the right to perform any necessary maintenance and repairs to the Designated Maintenance Items in accordance with the terms of this Section 3.

If the Maintaining Owner undertakes the maintenance and repairs to any designated Maintenance Item as provided above, then provided that any necessary maintenance work is undertaken by the low bidder of at least two (2) responsible contractors, each other Owner shall pay to the Maintaining Owner its Proportionate Share of the documented expenses incurred by the Maintaining Owner in Maintaining and repairing the Designated Maintenance Items, together with an administration fee in the amount of six (6) percent (6%) of the cost of that work.

Section 4. Parking Lot Lighting. Each Owner shall keep the paved parking areas located on its Parcel well-lighted with a minimum maintained intensity of not less than 1.0 foot candles (in each case, measured at two feet six inches (2'6" above the pavement), from dawn until 11:00 p.m. daily.

ARTICLE VI

PERMITTED USES

Section 1. Permitted Uses. The Property shall be used only for commercial purposes compatible with the operation of a typical retail shopping center. The Property may not be used in violation of the following restrictions:

(a) **Exclusive:** So long as prohibited by the Staples Lease dated June 27, 2005, for any Premises located in the Shopping Center, no part of the Shopping Center, shall be used for the sale, leasing or distribution of equipment (including computers and telecommunications equipment), furniture or supplies for business or office (including home office) use, or the provision of business or office services (including copying, printing, telecommunications, packing, shipping and business equipment repair services) (collectively, the "Exclusive Goods and Services"). Further, so long as prohibited by the Staples Lease, no part of the Shopping Center within three hundred feet of the Staples Store shall be used as a restaurant except as specifically approved by Staples, its successors and/or assigns. Landlord shall not advertise any other providers of the Exclusive Goods and Services within the Center or on any Center-specific internet web site, nor shall Landlord provide the general public with direct internet access (via link or otherwise) to any such other providers of the Exclusive Goods and Services. Notwithstanding the foregoing, this Section shall not prohibit any tenant or occupant from selling, leasing, distributing or providing the Exclusive Goods and Services incidental to such tenant's or occupant's primary business in

no more than an aggregate of 6% of such tenant's or occupant's sales floor area. Further, this Section shall not preclude the operation of: (i) a so-called consumer electronics store which sells incidentally computers and computer related accessories (so long as the aforesaid 6% restriction is not violated in any respect other than in connection with computers and computer related accessories and such operation occupies at least 20,000 square feet of leaseable area within the Shopping Center); (ii) furniture stores, provided that the sale of office furniture (including home office) does not exceed 10% of any such store's sales floor area; or (iii) one cellular telephone store; and

(b) **Other Prohibited Uses.** No part of the Center shall be used for any of the following: (i) if in excess of 2,400 square feet, a tanning, health, exercise or racquet club or day spa or gymnasium; (ii) bowling alley, skating rink, miniature golf or other sports or recreational facility; (iii) school, library, reading room, or house of worship; (iv) movie theatre, auditorium, meeting hall, hotel or motor inn, or any residential use; (v) massage parlor, adult bookstore, adult entertainment facility, a so-called "head" shop, off-track betting, gambling, gaming or check cashing facility; (vi) car wash, or laundromat; or any of the following uses if such uses have outdoor repair areas: automobile repair work or automotive service or gas station, tire store, automobile body shop, automobile, motorcycle, boat, trailer or truck leasing or sales, (vii) tavern or bar (unless operated incidental to, in conjunction with, and under the same name as, a restaurant permitted hereunder), amusement park, carnival, banquet facility, dance hall, disco, nightclub, or other entertainment facility including video game, virtual reality or laser tag room or facility, pool hall or arcade, or , if larger than 2,400 square feet, day-care facility, indoor children's recreational facility or other amusement center; (viii) any manufacturing, warehouse or office use (except incidental to a retail operation); (ix) funeral parlor, animal raising or storage (except incidental to a full-line retail pet supply operation), pawn shop, flea market or swap meet, junk yard; (x) drilling for and/or removal of subsurface substances, dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes; (xi) any facility related to the occult sciences, such as palm readers, astrologers, fortune tellers, tea leaf readers or prophets, frozen food locker or sales facility, milk distribution center, nursing home, old age center, or governmental facility (other than a post office or ABC store), recruiting center or employment center; or (xii) any use which constitutes a public or private nuisance or produces objectionable noise or vibration; and

Section 2. Rules and Regulations. By acceptance of a deed to a Parcel, each Owner agrees to comply with the Rules and Regulations as may be promulgated by Declarant from time to time to promote the best interests of all Owners and the operation of a first class shopping center (the "Rules"). Declarant shall have the right to amend or supplement the Rules from time to time, provided all such amended Rules are published and applied uniformly to all

Owners and their tenants, employees, agents and invitees. Declarant shall not adopt any rule or regulation which would deny any Owner of any Parcel its rights and easements to access over all driveways, sidewalks and parking areas, or to the use of all existing or necessary utilities, sewerage or drainage lines or facilities located under or within the Property.

Section 3. Restricted Actions by Owners. No Owner shall permit anything to be done or kept on the Property which would be in violation of any law, or which would constitute a nuisance to any other Occupant of the Property. Each Owner shall comply with all laws, regulations, ordinances (including without limitation, applicable environmental laws, building codes and zoning ordinances) and other governmental rules and restrictions applicable to its Parcel.

ARTICLE VII

BUILDING AND DEVELOPMENT RESTRICTIONS

Section 1. Building Restrictions. No buildings shall be constructed on any Parcel outside of the Building Areas except that in the initial development, Declarant may modify the Site Plan as to the size and configuration of the buildings, (subject to other restrictions, leases and zoning) without approval of any Owner or Occupant and file an amendment to this Declaration with the revised Site Plan. Buildings (or portions thereof) shall be subject to the following maximum height limitations, such height limitations shall be measured from the finished floor elevation of that building, including parapets facades, and chimneys:

- (a) Forty four feet (44') for any premises for a single tenant located on Lot 3 (as shown on Exhibit A) so long as it is no less than twenty five thousand square feet (25,000'), otherwise, the criteria for Lots 4, 5 and 6 shall apply;
- (b) Thirty feet (30') for any premises for a single tenant of at least fifteen thousand square feet (15,000') but less than twenty five thousand square feet (25,000) on Lots 4, 5 or 6;
- (c) Thirty six feet (36') for any premises for a single tenant of at least twenty five thousand square feet (25,000') on Lots 4, 5 and 6;
- (d) Twenty six feet (26') for any premises for a single tenant of less than fifteen thousand square feet (15,000') on Lots 4, 5 and 6; and
- (e) Twenty seven feet (27') for buildings located on Lots 1 or 2.

Section 2. Site Improvement Restrictions: Site improvements (as distinguished from building improvements) constructed on any Parcel shall comply with the following requirements and restrictions:

(a) All curbs and gutters shall be standard-sized concrete or asphalt type curbs. Drainage structures may be integrated with curb and gutter.

(b) All utility lines and equipment shall be entirely underground, except as indicated on the Site Plan.

(c) There shall be constructed on each Parcel, prior to opening for business or commencing any other use thereon, and maintained thereon at all times, no fewer than the number of parking spaces as shown on the Site Plan.

(d) No on-site septic system or sanitary sewer treatment facility will be permitted on any Parcel except that restaurant uses may permit, install and maintain grease traps for the restaurant operation.

(e) Pavement markings, directional signs, and other traffic indicators upon each Parcel shall be in accordance with the current Charlotte-Mecklenburg Department of Transportation standards and shall provide for a reasonable traffic flow scheme consistent with that shown on the Site Plan. The location of any curb cuts connecting the paved area on any Parcel to the Shopping Center roadways shall be subject to the prior written approval of Declarant, and may not be relocated without its prior written consent.

(f) All buffer strips and other undeveloped land areas shall be landscaped with trees, shrubs, or suitable ground cover (which includes grass) in a uniform manner.

Section 3. Site Plan Restrictions. All improvements constructed on the Property shall be located substantially in accordance with the Site Plan except with the prior approval of the Declarant. In particular, the paved parking and roadway areas on the Property shall be substantially consistent with the parking layout and traffic patterns indicated on the Site Plan. Any material deviation from the Site Plan, including any material deviation in the location of the Improvements on the Property from the layout or the location shown on the Site Plan, shall require an amendment to the Site Plan pursuant to an amendment to this Declaration; minor deviations shall be permitted without such an amendment. For the purposes of the foregoing, a "material deviation" shall be any deviation that changes the location of any common areas, or that has a material effect on traffic flow, parking arrangements, access to any Parcel or the visibility of the buildings on any Parcel from the Roadway Easement Areas or the public streets bounding the Property.

Section 4. Building Plan Approval Requirement. It is the intent of the Declarant that the improvements located on each Parcel blend harmoniously and attractively with the improvements located on the remainder of the Property. Accordingly, no building improvements shall be constructed on any Parcel until the following items have been approved in writing by the Declarant:

(a) A site plan showing the location and the dimensions of the building(s) and the landscaped areas, paving (roadway, sidewalk and parking), signage, site lighting, and other improvements to be constructed or installed on the Parcel, which must be consistent in all material respects with the Site Plan;

(b) ~~Plans showing the exterior elevations of all sides of the building(s) and sign(s) to be constructed or installed on the Parcel;~~

(c) Specifications and material samples describing the principal building materials and color(s) to be used on the exterior of the proposed building(s) (which exterior finishes shall be architecturally harmonious with those used on the remainder of the Property in accordance with applicable zoning);

(d) Landscape planting plans and plant materials list indicating the location, type, size and spacing of all trees, shrubs, ground cover and grassed areas, and the extent of the areas that will be irrigated; and

(e) Drainage plans prepared by a civil engineer showing the location of the catch basins, the size of the underground drainage lines, the location and capacity of on-site detention facilities, and the location and capacity of any outfalls to common drainage facilities designed in accordance with the overall stormwater plan for the Property.

The approval requirements of this Section 5 also shall apply to any renovations, additions, alterations or replacements of the building improvements located on any Parcel that affect the exterior appearance of those building improvements.

Section 5. General Building Standards. No building on the Property shall have a metal exterior. No structure of a temporary nature shall be allowed on any Parcel at any time, except that of an Owner's contractors and subcontractors during the period of construction of Improvements. Each building located on the Property shall be equipped with adequate roof drainage which shall be piped directly to the stormwater system. All buildings constructed upon the Property shall conform to the minimum standards specified by the applicable governmental building codes in affect at the time of such construction, as well as to all other rules, regulations, requirements, ordinances and laws of any local, state or federal governmental unit(s) or authorities having jurisdiction thereof.

Section 6. Screening and Related Requirements. All water towers, storage tanks, maintenance facilities, heating and air conditioning equipment, loading

docks and utility service areas located on any Parcel shall either be housed in closed buildings or otherwise screened from public view in a manner architecturally compatible with the buildings located on that Parcel. All trash receptacles for single-occupant free-standing buildings shall be located in a permanent gated enclosure that is constructed from the same primary building material as the building Improvements on that Parcel. All loading areas shall be screened from public view to the extent practical. All loading docks and associated areas shall have adequate space on each Parcel so that loading and maneuvering of trucks and service vehicles will not be carried out within the Shopping Center roadways.

Section 7. Construction Standards. At any time after any Owner has opened for business on its Parcel, each other Owner, throughout the entire period of construction on its Parcel, shall:

(a) Not permit mud, dirt, construction materials, trash or debris to accumulate or remain outside of the building site on its Parcel; or permit construction to proceed in a manner that interferes with the visibility of, access to or the operation of any other business being conducted on the Property;

(b) Cause trucks, construction equipment or machinery to park only within the Building Areas located on its Parcel, and cause construction vehicles and traffic to follow the routes designated on the Site Plan for construction traffic.

Section 8. Sign Standards. All signs on the Property shall be subject to the prior approval of Declarant as provided in Section 4, and shall not violate the following prohibitions, except with the prior written consent of Declarant, which may be granted or withheld for any reason:

(a) The content and wording of all exterior signs (with the exception of directional, traffic control, and parking signs, and signs advertising property for sale or lease) shall be restricted to setting forth the name of the Occupant, and its logo or trade name. Slogans, mottoes or other text shall not be permitted on any exterior sign unless otherwise approved by Declarant, and underwriters' or sign fabricators' labels and permits shall be located so as to be inconspicuous.

(b) There shall be no signs advertising businesses that are not located on the Property.

(c) No signs shall be painted on the exterior surface of any building, and no signs, stickers, advertising materials, or other items shall be attached to the exterior door or window glass of any building except for temporary banners and as restricted by applicable zoning restrictions.

(d) Unless otherwise approved by Declarant, no more than one sign may be attached to each face of a building; provided, however, that if a building is leased to multiple tenants, each in-line tenant may have one building-mounted sign over its storefront, and each corner tenant with two storefronts may have one building-mounted sign over each storefront.

(e) All building-mounted signs shall be individually cut and mounted letters or raised letters on panels, in accordance with applicable zoning.

(f) All sign cabinets, conductors, transformers, ballasts, attachment devices, wiring and other equipment shall be concealed.

(g) ~~There shall be no flashing, blinking, moving, animated or audible signs.~~

(h) There shall be no rooftop signs or any signs perpendicular to the face of any building.

(i) There shall be no sign trailers, hot air balloons, or motor vehicles used to display signage, and there shall be no signs made of cloth, paper, or cardboard material except as may be approved by Declarant for special events.

(j) There shall be no free-standing signs located on the Property except for the Entrance Sign, traffic control signs, and to the extent permitted by applicable sign ordinances, (1) "coming soon" signs not in excess of eight (8) feet in height, and (2) one or more free-standing common identification signs identifying the Property and various Occupants thereof.

(k) All signs shall comply with the relevant sign control ordinances.

Section 9. Landscaping and Irrigation Standards. Each Owner shall provide landscaping for all parking lot areas, buffer areas, and parking lot perimeters, and foundation plantings around buildings, all in compliance with the terms of this Declaration and applicable city and/or county ordinances. Any areas not covered by buildings or paving shall be landscaped with trees, shrubs, ground covers, or irrigated lawn areas. The landscaping design of each Parcel shall be subject to the prior approval of Declarant, as provided in Section 4. All landscaping plans shall be prepared by a registered landscape architect and shall include schedules for maintenance, pruning, fertilization, and irrigation specifications, as well as for the rotation of annual plants.

ARTICLE VIII

INSURANCE, CONDEMNATION AND REBUILDING

Section 1. Casualty, Insurance and Rebuilding. Each Owner shall obtain and maintain in force a policy of property insurance (ISO Special Form or its equivalent), covering all Improvements on its Parcel in an amount equal to one hundred percent (100%) of the replacement cost thereof, less the cost of any non-destructible items such as pavings, foundations and footings. Declarant (or the Management Firm acting on its behalf) shall obtain and maintain in force a ~~policy of insurance covering the improvements included within the Designated Maintenance Items, including the sign, and the premium for this policy shall be included in the Common Area Costs.~~

If the Improvements on any Parcel are destroyed or damaged by fire or other casualty, the Owner of that Parcel may elect to rebuild or not to rebuild the damaged building improvements, but shall remove or clean up all rubbish and debris, grade and landscape or pave the building area, and restore any damaged parking area and thereafter maintain its Parcel in accordance with the Provisions of Article V, Section 1. The clean up and reclaiming effort shall commence no later than the earlier of (a) two (2) months following the casualty; or (b) One (1) month after insurance settlement. If the Owner elects to rebuild, it shall proceed with due diligence to repair or restore the Improvements to as good a condition as existed before such damage or destruction, and shall comply in all respects with the provisions of Article VII.

Section 2. Release of Claims. Each Owner releases each other Owner from any and all liability for any loss or damage to property, or for lost rents or profits, caused by fire or other casualty, even if the fire or other casualty was caused by the fault or negligence of the Owner being released, or by any other party for whom that Owner may be responsible. Each Owner shall cause the policy of casualty insurance required by Section 1 to contain a waiver by the insurer of any rights of subrogation that it may acquire by virtue of the payment of a claim under the policy, provided that such a waiver is available without payment of any additional premiums.

Section 3. Condemnation. In the event of a taking by condemnation or otherwise by governmental authority which damages any part of Improvements, the Owner of the damaged portion of the Improvements shall immediately use the condemnation proceeds and other funds to the extent needed, to repair and restore the Improvements to an integrated and architecturally complete building or structure, if the remaining portion of the Improvements is capable of being so repaired and restored in the discretion of the Owner of those Improvements is capable of being so repaired and restored in the discretion of the Owner of those Improvements. If the remaining portion of the Improvements is not capable of

being repaired or restored, then the Owner of that Parcel shall promptly demolish the damaged Improvements, remove or clean up all rubbish and debris from the Parcel, grade and landscape or pave the area, and thereafter maintain its Parcel in accordance with the provisions of Article V, Section 1.

In the event of a taking by condemnation or otherwise of any Parcel, the entire award or purchase price shall belong to the Owner of that Parcel. Notwithstanding the foregoing, any Owner may file a separate claim with the condemning authority over and above the value of the Parcel being taken in fee simple to the extent of any damage suffered by that Owner as a result of the loss of easement or other rights; provided, however, that such claim does not reduce the claim payable to the Owner of fee simple title to the Parcel being taken.

Section 4. Liability Insurance. Each Owner at all times shall obtain and maintain in force a policy of commercial general liability insurance (Accord 25 (2001/08) form or its equivalent) with a combined single limit of at least \$1,000,000.00 per occurrence, and umbrella coverage of at least \$5,000,000 which minimum limit may be increased by an affirmative vote of a majority of the Owners. During the period of construction of Improvements on any Parcel, the Owner of that Parcel shall maintain builder's risk, workers' compensation and such other insurance policies as are required by sound construction practices. Declarant (or the Management Firm acting on its behalf) shall obtain and maintain in force a policy of commercial general liability insurance covering the sign easement for the Entrance Sign, meeting the requirements of the first sentence of this Section 4, naming all Owners as additional insureds. The premiums for this policy shall be included in Common Area Costs.

Section 5. Indemnity. Each Owner shall indemnify, defend and hold harmless each other Owner against all loss, liability, expense and damage, including reasonable attorneys' fees and other litigation costs, arising from death, bodily injury or property damage that occurs on the Parcel of the indemnifying Owner, provided, however, that this indemnification shall not extend to any claims caused in whole or in part by any act or omission of the Owner being indemnified.

Section 6. Blanket Policies and Certificates. Any policy of insurance required to be carried by any Owner under this Article VIII shall be carried with a reputable insurance company licensed to do business in the State of North Carolina on an admitted basis, and may be provided as part of a so-called blanket policy of insurance covering other locations, as long as the coverage limits set forth in this Article VIII are satisfied as to its Parcel. Each Owner shall deliver to Declarant and/or the Management Firm, as a condition of the closing of the purchase of its Parcel, a certificate of insurance evidencing that the policies of insurance required to be maintained by it under this Article VIII are in full force and effect. Each Owner shall also deliver annually, a certificate evidencing the renewal of such policies as are required.

Section 7. Self-Insurance. Any Owner may elect to self-insure all or any portion of the risks required to be insured under Section 1 or Section 4 (other than the liability insurance policy required to be maintained on the Drainage Easement Areas or the Roadway Easement Areas by Declarant) so long as: (a) such Owner has a tangible net worth, determined in accordance with generally accepted accounting principles, consistently applied, in excess of One Hundred Fifty Million and No/100 Dollars (\$150,000,000.00); and (b) such Owner delivers to Declarant and/or the Management Firm, at the times required for delivery of the certificates and renewals thereof in Section 6 of this Article VIII, a written notice of self insurance, specifying the risks it has elected to self-insure, ~~accompanied by a current audited financial statement evidencing its compliance with the net worth requirement set forth above.~~

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. Any Owner, or Declarant, and the Management Firm shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of any party to enforce any covenant or restriction contained in this Declaration shall not be deemed a waiver of the right to do so thereafter.

~~Section 2. Exculpation. Notwithstanding any provision to the contrary contained in this Declaration, it is specifically understood and agreed that there shall be absolutely no personal liability on the part of any Owner, its shareholders, officers, directors, members, managers or partners, with respect to the performance or non-performance of any of its obligations under this Declaration. Each owner shall look solely to the Parcel owned by any defaulting Owner, the Improvements located thereon and any insurance or condemnation proceeds related thereto, for the satisfaction of any remedy of the non-defaulting Owner resulting from the breach of any of the obligations or covenants of this Declaration by the defaulting Owner; provided, however, that this provision shall not be deemed to affect the right of any Owner to seek injunctive relief or to bring suit for specific performance. If any Owner conveys its fee simple interest in its Parcel, that Owner shall be relieved from all obligations under this Declaration accruing after the date of the conveyance.~~

Section 3. Force Majeure. If any Owner is delayed in the performance of any obligation under this Declaration as a result of an act of God, labor dispute, shortage of labor, materials or supplies or other event beyond its reasonable control (it being agreed that the financial inability of any Owner to perform any obligation shall never be deemed an event beyond its control), the time for

performance of that obligation shall be extended for the reasonable period of that delay.

Section 4. Estoppel Certificates. Each Owner shall, within fifteen (15) days after the written request of any other Owner, the Declarant or the management Firm, certify by a written instrument, duly executed and acknowledged, to any purchaser or proposed purchaser, or mortgagee or proposed mortgagee or any other party specified in the request: (a) whether this Declaration has been supplemented or amended, and if so, the nature of the supplement or amendment; (b) whether there exists any default under this Declaration, and if so, a description of that default; (c) whether there exists any offset, defense or counterclaim on the part of the certifying party as to the performance of its obligations under this Declaration, and if so, a description of the nature and amount of any such offset, defense or counterclaim, and (d) such other matters as may be reasonably be requested. Each Owner shall provide the Certificate to a requesting Owner up to twice in one calendar year at no charge. Any additional requests for Certificates in a calendar year shall be accompanied with a Five Hundred Dollar (\$500) processing fee.

Section 5. No Partnership. The provisions of this of this Declaration are not intended to create, shall not be interpreted to create a joint venture, a partnership or any similar relationship between Owners.

Section 6. Severability. Invalidation of any covenant or restriction contained in this Declaration by judgment or court order shall not affect any other provisions of this Declaration all of which shall remain in full force and effect.

Section 7. Duration. The covenants and restrictions contained in this Declaration shall run with and bind the Property for a period of fifty (50) years from the Date this Declaration is recorded, after which time the term shall be automatically extended for five (5) successive periods of ten (10) years each for a total, including the initial term, of one hundred (100) years, unless at least sixty seven percent (67%) of the Owners elect not to extend the term of this Declaration. Notwithstanding the foregoing, the perpetual easements created in this Article III of this Declaration shall not be affected by the expiration or termination of this Declaration.

Section 8. Amendment. Except as expressly provided in Article II, Section 3, this Declaration may be amended, modified or terminated only by an instrument signed by at least sixty seven percent (67%) of the Owners, and by Declarant (so long as it owns any portion of the Property) and properly recorded in the office of the Register of Deeds of Mecklenburg County, North Carolina. Notwithstanding the foregoing, any amendment to this Declaration that is solely for the purpose of amending the Site Plan by Declarant shall not require the joinder of the Owners so long as the amended Site Plan is not contrary to any other provision of this Declaration.

Section 9. Governing Law. This Declaration has been entered into under, and shall be construed in accordance with, the laws of the State of North Carolina.

Section 10. Private Agreement. This Declaration shall not be construed to grant any rights to the public in general.

Section 11. Successor to Declarants. If the approval of Declarant, or any designation by Declarant, is required under the terms of this Declaration and Declarant no longer owns any interest in any Parcel, the right of approval or designation shall be exercised by the fee simple Owner of Parcel 4, and such successor also shall assume the maintenance obligations of Declarant with respect to the Designated Maintenance Items. Notwithstanding the foregoing, Declarant expressly retains the right to assign all of its rights and obligations under the terms of this Declaration by recording a written instrument in the Office of the Register of Deeds for Mecklenburg County, North Carolina.

Section 12. Reasonable Consent/Approval. Whenever the consent or approval of a party is required by the terms of this Declaration, such consent or approval shall not be unreasonably withheld, delayed or conditioned.

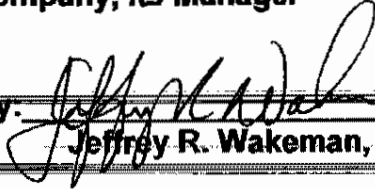
Section 13. Consent of Owners. Wherever in this Declaration, the approval or consent of a specified percentage of Owners is required, it shall mean the approval or consent of Owners who own Parcels with an aggregate acreage comprising at least the specified percentage of the total acreage of the Property except that the aggregate acreage owned by Declarant or its affiliates shall be multiplied by five (5) to determine the Declarant's aggregate acreage for the purpose of determining consent.

Section 14. Subordination of Purchase Money Deed of Trust. This Declaration shall be subject and subordinate to any deeds of trust of record at the time of the recording of this declaration. Any subsequent deed of trust shall be subject to all of the terms and conditions of this Declaration.

Section 15. Attorneys Fees. If any action, suit, or legal proceeding is sought, taken, instituted or brought by any party to this Agreement to enforce its rights under this Agreement, all costs, expenses, and fees, including, without limitation, court costs and reasonable attorney's fees, of the prevailing party in satisfaction, suit, or proceeding shall be borne by the party against whose interest the judgment, settlement, or decision is entered.

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

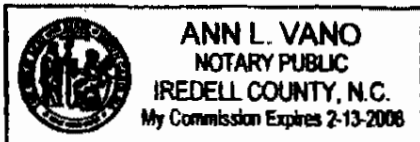
Centdev Northlake, LLC, a North Carolina limited liability company by Centdev Northlake Management, LLC A North Carolina limited liability company, its Manager

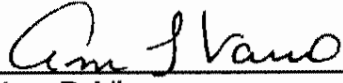
By: 
Jeffrey R. Wakeman, Member

State of North Carolina
County of Mecklenburg

I, Ann L. Vano, Notary Public, certify that Jeffrey R. Wakeman personally came before me this day and acknowledged that he is the Member of Centdev Northlake, LLC, a North Carolina limited liability company, and that, by authority duly given and as the act of the limited liability company, he as such Member signed the foregoing instrument in the name of the said limited liability company.

Witness my hand and notarial stamp or seal this 29th day of Aug 2008.




Notary Public

My Commission Expires 2-13-08

[Notarial Seal]

Prepared by:
Ann L. Vano
Centdev Northlake, LLC
16930 W. Catawba Avenue
Suite 206
Cornelius NC 28031

EXHIBIT A

**Being all of Lots 1-6 of Smith Corners at Northlake as shown on the map thereof
recorded in Map Book 43 at Page 871 of the Mecklenburg County Public Registry.**

EXHIBIT B

DEVELOPMENT STANDARDS

PART I

COMMITMENT:

(A) THE BUILDING AND PARKING CONFIGURATIONS, PLACEMENTS AND SIZES, AND THE LOCATION OF ALL OTHER DEVELOPMENT SHOWN ON THE ILLUSTRATIVE SITE PLAN (RZ-2) ARE SCHEMATIC IN NATURE AND MAY BE ALTERED OR MODIFIED BASED UPON TENANT AND ~~DEVELOPMENT REQUIREMENTS DURING THE DESIGN DEVELOPMENT AND CONSTRUCTION~~ DOCUMENT PHASES FOR THIS PROJECT, AS PROVIDED FOR UNDER SECTION 6 OF THE ~~ZONING ORDINANCE. HOWEVER, THE PROPOSED DEVELOPMENT (i.e. BUILDING, PARKING OR~~ INTERNAL DRIVEWAYS) WILL NOT ENCROACH PAST THE DEVELOPMENT LIMITS BOUNDARY AS SHOWN ON RZ-1 AND BUILDINGS WILL NOT ENCROACH PAST THE INTERNAL BUILDING ENVELOPE LIMITS AS SHOWN ON RZ-2.

PART II

PERMITTED DEVELOPMENT WITHIN THIS SITE:

(A) ALL USES PERMITTED BY RIGHT AND UNDER PRESCRIBED CONDITIONS AS SET FORTH IN THE CC ZONING DISTRICT AND IN MULTIPLE BUILDINGS ARE PERMITTED IN THIS DEVELOPMENT. DRIVE THROUGH WINDOWS WILL NOT BE PERMITTED WITH ANY OTHER USE OTHER THAN A BRANCH BANK. THE PLANS FOR A BRANCH BANK W/A DRIVE THROUGH WINDOW ARE SUBJECT TO REVIEW AND APPROVAL BY CMPC STAFF, THROUGH THE BUILDING PERMIT PROCESS.

~~(B) UP TO 140,000 SQUARE FEET MAXIMUM WILL BE PERMITTED.~~

PART III

VEHICULAR ACCESS POINTS AND CONNECTIVITY:

(A) DIRECT VEHICULAR ACCESS TO EXISTING SMITH CORNERS BOULEVARD WILL BE VIA (5) CLASS II TWO-WAY DRIVEWAYS, AS SCHEMATICALLY DEPICTED ON BOTH RZ-1 AND RZ-2. THE FINAL LOCATION OF THESE DRIVEWAYS WILL BE SUBJECT TO APPROVAL BY THE CHARLOTTE DEPARTMENT OF TRANSPORTATION (CDOT) AND MODIFICATIONS TO THE LOCATIONS AS DEPICTED HEREIN, WILL BE ALLOWED TO ACCOMMODATE THE FINAL SITE AND ARCHITECTURAL PLANS, AND TENANT DEVELOPMENT REQUIREMENTS. A TYPE III DRIVEWAY, WITH OR WITHOUT A LANDSCAPE MEDIAN THAT ALIGNS WITH PANOS DRIVE, WILL SERVE AS THE MAIN ENTRANCE TO THIS PROJECT. THE NEW DRIVEWAYS ASSOCIATED WITH THIS DEVELOPMENT SHALL EITHER ALIGN WITH THE EXISTING DRIVEWAYS ACROSS SMITH CORNERS BOULEVARD OR BE OFFSET A MINIMUM 20 FEET AS MEASURED FROM THE END OF DRIVEWAY CURB RETURNS. DRIVEWAY WIDTHS SHALL BE DETERMINED AT THE DRIVEWAY PERMITTING STAGE.

PART IV

DESIGN GUIDELINES:

SECTION 1: OFF AND ON STREET PARKING

(A) THE PARKING SPACES DEPICTED ON THE ILLUSTRATIVE SITE PLAN MAY VARY IN LAYOUT AND LOCATION, BUT, IN ALL EVENTS, WILL BE SUFFICIENT TO SATISFY THE MINIMUM OFF STREET PARKING STANDARDS ESTABLISHED UNDER THE ORDINANCE.

(B) NO PARKING WILL BE PERMITTED BETWEEN THE BUILDINGS AND SMITHS CORNERS BOULEVARD.

SECTION 2: LANDSCAPE AND SCREENING

(A) SCREENING OF THE SERVICE AREAS BETWEEN THE PROPOSED RETAIL BUILDINGS AND SMITH CORNERS BOULEVARD WILL BE ACCOMPLISHED BY THE INSTALLATION OF 6 FOOT MASONRY WALLS. THE 35 FOOT SETBACK AREA BETWEEN THE SCREEN WALLS AND SMITH CORNERS BOULEVARD WILL CONTAIN TREES AND SCREEN SHRUBS AS SHOWN ON THE ~~CROSS SECTION AND PLAN OF THESE AREAS DEPICTED ON SHEET RZ-2~~ FURTHER, THE ARCHITECTURAL MASONRY SCREEN WALL SHALL BE SLIGHTLY VARIED IN LOCATION IN ORDER TO PROVIDE FURTHER ARTICULATION.

(B) THIS DEVELOPMENT SHALL CONFORM TO THE STANDARDS SPECIFIED IN THE CITY CHARLOTTE TREE ORDINANCE.

(C) A MINIMUM 6 FOOT PLANTING STRIP WITH TREES INSTALLED AT 40' ON CENTER SHALL BE PROVIDED ALONG THE INTERNAL PRIVATE STREETS, FOLLOWED BY A MINIMUM 5 FOOT SIDEWALK. WHERE PERPENDICULAR PARKING SPACES ABUT INTERNAL SIDEWALKS, THESE SIDEWALKS WILL BE A MINIMUM OF 7 FEET IN WIDTH.

SECTION 3: SIGNAGE

(A) ALL SIGNS PLACED ON THE SITE WILL BE ERECTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE ZONING ORDINANCE.

SECTION 4: STORM WATER MANAGEMENT/EROSION CONTROL MEASURES

(A) STORM WATER RUNOFF FROM THIS DEVELOPMENT WILL BE MANAGED BY THE EXISTING OFF-SITE SHARED REGIONAL DETENTION FACILITY.

(B) EROSION AND SEDIMENTATION CONTROL MEASURES SUCH AS PHASED GRADING, TEMPORARY OR STAGED SEEDING WILL BE UTILIZED DURING THE CONSTRUCTION OF THIS PROJECT. POLYMERS AND OTHER FLOCCULATING MEASURES WILL BE EMPLOYED IN TWO STAGE SEDIMENT BASINS IN ORDER TO ENHANCE SETTLING CAPABILITIES AND TO REDUCE THE DISCHARGE OF SOLIDS.

SECTION 5: SIDEWALKS

(A) 5' MINIMUM INTERIOR SIDEWALKS WILL CONNECT THE NEW BUILDING(S) TO A PUBLIC SIDEWALK ALONG SMITHS CORNERS BOULEVARD. THE SIDEWALK ALONG THE FRONT OF ALL BUILDING(S) WILL BE A MINIMUM OF 10 FEET IN WIDTH. (ALSO SEE NOTE SECTION 2 NOTE C.)

(B) AN 8 FOOT PLANTING STRIP FOLLOWED BY A 6 FOOT SIDEWALK WILL BE INSTALLED ALONG THE FRONTAGE WITH SMITHS CORNERS BOULEVARD. TREES WILL BE INSTALLED IN 8 FOOT PLANTING STRIP AT 40' ON CENTER. WHERE THE SIDEWALK IMPROVEMENTS OCCUR OUTSIDE THE RIGHT-OF-WAY, THE PETITIONER SHALL CONVEY A PERMANENT EASEMENT TO THE CITY OF CHARLOTTE.

SECTION 6: LIGHTING

(A) ALL INTERIOR FREESTANDING LIGHTING FIXTURES INSTALLED WILL BE UNIFORM

THROUGHOUT THE DEVELOPMENT. NO WALL PAK LIGHTING WILL BE USED ON THE EXTERIOR OF PROPOSED BUILDINGS; INSTEAD DECORATIVE DOWN LIGHTING WILL BE UTILIZED.

(B) ALL DIRECT LIGHTING INSTALLED WITHIN THE SITE SHALL BE DESIGNED SUCH THAT DIRECT ILLUMINATION DOES NOT EXTEND PAST ANY PROPERTY LINE.

(C) PEDESTRIAN SCALE LIGHTING WILL BE INSTALLED ALONG THE INTERNAL PRIVATE STREETS.

SECTION 7: FIRE PROTECTION

ADEQUATE FIRE PROTECTION IN THE FORM OF FIRE HYDRANTS WILL BE PROVIDED ACCORDING TO THE CITY OF CHARLOTTE FIRE MARSHAL'S SPECIFICATIONS.

SECTION 8: DESIGN STANDARDS

(A) DUMPSTER/RECYCLE RECEPTACLES WHERE PROVIDED, WILL BE SCREENED IN ACCORDANCE WITH THE ORDINANCE. EACH DUMPSTER/RECYCLE AREA WILL BE ENCLOSED ON THREE SIDES BY EITHER A MASONRY SCREEN WALL OR BY USING THE WALL OF THE ADJACENT RETAIL BUILDING. THE FRONT OF THE ENCLOSURE SHALL BE A HINGED WOODEN GATE.

(B) THE DEVELOPER SHALL PROVIDE BICYCLE RACKS TO ACCOMMODATE ONE BICYCLE PER EACH 20 VEHICLE PARKING SPACES. THE INVERTED "U" TYPE RACK, WHICH ACCOMMODATES TWO BICYCLES SHALL BE UTILIZED.

(C) OUTDOOR SEATING/OPEN SPACE AREAS WILL BE INCORPORATED INTO THE DEVELOPMENT, AS DEPICTED ON SHEET RZ-2. THESE OUTDOOR SEATING AREAS WILL BE LOCATED IN PEDESTRIAN CIRCULATION AREAS AND WILL CONSIST OF SPECIALTY PAVING, DECORATIVE BENCHES AND PEDESTRIAN SCALE LIGHTING.

(D) ONE BUS STOP WITH A BENCH AND SIGN WILL BE INSTALLED ADJACENT TO SMITH CORNERS BOULEVARD. THE EXACT LOCATION OF THIS STOP WILL BE COORDINATED WITH CATS STAFF. THE BUS DRIVERS SHALL BE ALLOWED TO UTILIZE ALL PUBLIC RESTROOM FACILITIES AS PROVIDED WITHIN THE INDIVIDUAL RETAIL USES.

(E) DECORATIVE PAVEMENT WILL BE INSTALLED IN THE INTERNAL PRIVATE STREETS. FINAL LOCATION AND WIDTH TO BE DETERMINED BY THE DEVELOPER.

SECTION 9: ARCHITECTURAL STANDARDS

(A) THE BUILDINGS FRONTING ON SMITHS CORNERS BOULEVARD WILL EXHIBIT "FOUR SIDED" ARCHITECTURE. (SEE ATTACHED CONCEPTUAL ELEVATIONS FOR THESE BUILDINGS.)

PART V

AMENDMENTS TO REZONING PLAN

(A) FUTURE AMENDMENTS TO THE TECHNICAL DATA SHEET AND THE PROPOSED ILLUSTRATIVE ZONING PLAN MAY BE APPLIED FOR BY THE THEN OWNER OR OWNERS OF THE PARCEL OR PARCELS INVOLVED IN ACCORDANCE WITH CHAPTER 6 OF THE ORDINANCE.

PART VI

BINDING EFFECT OF THE REZONING APPLICATION

(A) IF THE PETITIONER'S REZONING PETITION IS APPROVED, THE DEVELOPMENT PROGRAM ESTABLISHED UNDER THESE DEVELOPMENT STANDARDS, THE ILLUSTRATIVE SITE PLAN AND OTHER SUPPORTIVE DOCUMENTS SHALL, UNLESS AMENDED IN THE MANNER PROVIDED UNDER THE ORDINANCE, BE BINDING UPON AND INSURE TO THE BENEFIT OF THE PETITIONER AND SUBSEQUENT OWNERS OF THE SITE, AND THEIR RESPECTIVE HEIRS, DEVISES, PERSONAL REPRESENTATIVES, SUCCESSORS IN INTEREST AND ASSIGNS

(B) THROUGHOUT THESE DEVELOPMENT STANDARDS, THE TERMS, "PETITIONER" AND "OWNERS" SHALL BE DEEMED TO INCLUDE HEIRS, DEVISES, PERSONAL REPRESENTATIVES, SUCCESSORS IN INTEREST AND ASSIGNS OF THE PETITIONER AND THE CURRENT AND SUBSEQUENT OWNERS OF THE SITE WHO, FROM TIME TO TIME, MAY BE INVOLVED IN ANY FUTURE DEVELOPMENT OF THE SITE.
