

March 5, 2008 Draft

DECLARATION FOR THE FRENCH BROAD PLACE CONDOMINIUMS

This Declaration is made as of _____, 2008, by French Broad Place, LLC, a North Carolina limited liability company, (the "Declarant"). Declarant declares as follows:

A. Declarant is the owner of the parcel of real estate located in Transylvania County, North Carolina, containing 1.243 acres, as shown on the Plat Recorded in Plat File 12, Slide _____, in the Transylvania County Registry. This parcel of real estate will be referred to as "the Property."

B. Declarant desires to convert the Property into the condominium form of ownership pursuant to N.C.G.S. Chapter 47C, with mixed commercial and residential uses.

C. Declarant also desires to subject the Property to covenants, conditions and restrictions to be binding upon all owners of any interest in the condominiums and their lessees, guests, mortgagees, heirs, executors, administrators, successors and assigns.

THEREFORE, pursuant to N.C.G.S. §47C-2-101, Declarant executes this Declaration to create French Broad Place Condominiums, and declares that the condominium property and all units in it shall be held and owned subject to the following terms, provisions, covenants, conditions and restrictions, which shall be binding upon all owners of any unit of the condominium and their lessees, guests, mortgagees, heirs, executors, administrators, successors and assigns:

1. Definitions. The definitions set forth in N.C.G.S. §47C-1-103 shall apply to this Declaration, except that the terms listed below shall have the specific meanings stated:

- (a) "Association" shall mean French Broad Place Owners Association, a North Carolina nonprofit corporation, its successors and assigns.
- (b) "Declarant" shall mean French Broad Place, LLC, its successors

and assigns.

(c) "Declaration" shall mean this Declaration for French Broad Place Condominiums.

(d) "Residential Unit" shall mean a condominium unit restricted to residential use, with its entrance on the third or fourth floor of the Building, and with Unit Numbers 301 and higher.

(e) "Commercial Unit" shall mean a condominium unit available for commercial use, with its entrance on the first or second floor of the Building, and with Unit Numbers lower than 299.

(f) "Common Elements" shall include all elements which are defined as common under Chapter 47C, and shall specifically include the parking structure, exterior lighting, elevators and stairways, hallways, water and sewer systems, electrical systems, trash containers, and service area storage.

2. Name. The name of the condominium created by this Declaration is "French Broad Place Condominiums."

3. Maximum Number of Units. The Condominium Units will be in a single building, which will contain commercial units on the first two floors, and residential units on the upper floors. The Condominium will contain twenty-nine residential units. The commercial floors will contain between ten and twenty units, but the Declarant (and with Association approval, future purchasers) shall have the right to subdivide the commercial units into smaller units by future supplements to this Declaration. The percentage interests of the common areas for any subdivided unit (and related costs) shall be allocated between the new units based upon the square footage of each resulting unit.

4. Description of Units. The Building is under construction at the effective date of this Declaration. The building plans and the units on each floor of the building are more fully described and depicted by the plans recorded in Plat File 12, Slide _____, Transylvania County Registry, which plans are incorporated into this Declaration and will be referred to as "the Plans." The identifying number for each unit is as shown on the Plans. A certificate of completion will be filed showing any variation between the Plans and the final construction.

5. Boundaries of Units. The horizontal boundaries of each unit are the interior surfaces of the walls along the perimeter of the Unit. The vertical boundaries of each unit are the interior surfaces of its ceilings and floors. In determining whether materials or items are common elements, limited common elements or parts of a unit, the terms and provisions of N.C.G.S. §47C-2-102 shall apply. All Unit owners shall be responsible for the maintenance (and replacement if needed) of the paint or other coverings on their walls and ceilings, and for any floor coverings. Commercial Unit owners shall also be responsible for any non-load bearing partition

walls, and items such as light fixtures and ceiling tiles installed as part of any suspended ceiling.

6. Limited Common Elements. In determining whether materials or items are limited common elements and how they should be allocated, the terms and provisions of N.C.G.S. §47C-2-102 shall apply. In addition, any balcony and any part of a heating, ventilation and air conditioning system or a satellite dish exclusively serving a unit that is located outside of the boundaries of the unit is a limited common element to be allocated exclusively to that unit. The patio area at the Southeastern corner of the building shall be a limited common element of the adjoining commercial unit. Each owner shall be responsible for the maintenance and repair of the owner's HVAC and satellite systems (or a prorata share of any shared systems). Each residential owner shall be assigned a space for storage in the locations shown on the Plans, and those spaces shall be limited common elements for the benefit of the residential owners. The Green Roof park area shall be a limited common element for use by the residential owners and their guests, and all costs of its maintenance shall be allocated exclusively to the residential owners.

7. Parking Rights. The Plans anticipate a parking structure on the Property. The lower portion of the Parking Structure shall be a general common element, and shall be available to all Unit owners, their employees, customers, and guests. Residential owners shall be discouraged from using the lower spaces during business hours. The upper portion of the Parking Structure may be gated, and shall be a limited common element available only to the residential unit owners. Owners of residential units shall be assigned two assigned spaces. The Association shall have the power to adopt rules to assist in managing parking for the benefit of all owners, including matters such as the operation of gates, guest parking, and parking for disabled owners and guests.

8. Special Declarant Rights. The Declarant reserves the following special declarant rights, which shall apply to all of the Property and which must be exercised within five (5) years of the date of recording of this Declaration:

- (a) to complete all improvements shown on the Plans;
- (b) to maintain a sales office on the Property;
- (c) to maintain signs advertising the Condominium on the common elements;
- (d) to use easements through the common elements for the purpose of making improvements to the Property;
- (e) to appoint or remove any officer or member of the executive board of the Association, subject to the limitations stated in N.C.G.S. §47C-3-103(d) and (e).

9. Reservation of Easements. Pursuant to N.C.G.S. §47C-2-116, the Declarant reserves to itself, its successors and assigns, such easements over all of the common elements of the Condominium as may be reasonably necessary to exercise the Special Declarant Rights specified in section 8 above. In addition, Declarant reserves an easement to locate an automated teller machine at a convenient location in a common area on the Property (which may be inside the Building), and to locate artwork or other displays in the corridors of the Building. Any rent paid for the location of such items shall belong to Declarant. Finally, the Units and Common Elements are made subject to easements in favor of the Declarant, the Association, appropriate utility and service companies and governmental authorities for such utility and service lines and equipment as may be necessary or desirable to serve any portion of the Property. The easements established by this Section shall include, rights to install, maintain, repair, and relocate gas lines, water pipes, sewer and drain lines, telephone wires and equipment, television and equipment facilities (cable or satellite), electrical wires, conduits and equipment and ducts and vents, and any other appropriate equipment and facilities through the Units and Common Elements. Unless approved in writing by the affected Unit Owner, any such easement through a Unit shall be located either in substantially the same location as existed at the time of first conveyance of the Unit, or in a location which will not materially interfere with the use and enjoyment of the Unit by its owners. As long as allowed by postal regulations, residential owners shall have a location available for mailboxes inside the first floor lobby.

10. Allocated Interests. The undivided interests in the common elements, the common expense liability and votes in the Association (collectively, "the allocated interests") are to be allocated among the units in accordance with the list and description of Units attached to this Declaration as Exhibit A. Also listed on Exhibit A is the allocation to each unit of expenses which may be unique to the residential units or commercial units.

11. French Broad Place Owners Association. Every unit owner shall be a member of the Association. Ownership of a fee interest in a unit shall be the only qualification for membership, and membership shall be appurtenant to and shall not be separated from such ownership. The purposes and duties of the Association shall be to manage the condominium pursuant to the terms and provisions of Article 3 of Chapter 47C of the North Carolina General Statutes, this Declaration, the Bylaws of the Association, and any Rules and Regulations adopted by the Association; and to promote and to protect the enjoyment and beneficial use and ownership of the units. The Association shall have all of the powers stated in N.C.G.S. §47C-3-102. The Association shall have the power to enforce in its own name the provisions of this Declaration, Bylaws, and any Rules and Regulations

adopted by the Association. In addition, the Association shall have the power to:

(a) Adopt and amend bylaws and rules and regulations; except that the rule that the residential and commercial unit owners' right to elect two members each to the Board of Directors cannot be changed without a 75% vote of both the residential and commercial owners;

(b) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners;

(c) Hire and terminate managing agents and other employees, agents, and independent contractors;

(d) Institute, defend, or intervene in its own name in litigation or administrative proceedings on matters affecting the Condominium;

(e) Make contracts and incur liabilities;

(f) Regulate the use, maintenance, repair, replacement, and modification of common elements;

(g) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, provided that common elements may be conveyed or subjected to a security interest only pursuant to G.S. 47C-3-112;

(h) Grant easements and licenses through or over the common elements;

(i) Impose and receive any payments for services provided to unit owners;

(j) Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines (not to exceed \$150.00 per day) for violations of the declaration, bylaws, and rules and regulations of the Association;

(k) Impose reasonable charges for the preparation and recording of amendments to the declaration, resale certificates or statements of unpaid assessments;

(l) Provide for the indemnification of and maintain liability insurance for its officers, directors, employees and agents;

(m) Exercise all other powers that may be exercised in North Carolina by a nonprofit corporation; and

(n) Exercise any other powers necessary and proper for the governance and operation of the Association.

12. Restrictions on Use - Residential Units. Residential units shall be subject to the following restrictions on use:

(a) Each residential unit shall be used for residential purposes only. Any home occupation conducted from a residential unit must be of a nature which does not generate noise, traffic from employees, deliveries, or customers, or other matters which could constitute an annoyance to the residential character of the upper floors.

(b) The maximum number of permanent occupants of any one unit shall be that number which is the product of the number of bedrooms in a unit (as

originally designed) times two, regardless of the age of any of the occupants.

(c) Noxious, offensive or loud activities shall not be conducted within any unit. Each unit owner shall refrain from any use of his or her unit which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other unit owner or occupant.

(d) All governmental codes, regulations and ordinances applicable to a unit shall be observed.

(e) No unit may be subdivided.

(f) Dogs, cats or other pets may be kept in the residential units, subject to regulation by the Association.

(g) No unit shall be used for transient residential purposes. Every lease relating to any unit must be in writing, must be for a term of at least thirty days and must provide that the tenant is obligated to observe all applicable terms and provisions of this Declaration, the bylaws of the Association and any of its rules and regulations. No more than three separate leases shall be allowed for a Unit in any calendar year.

(h) All window coverings or dressings within a unit shall have a light colored neutral appearance from the exterior.

(i) No sign shall be exhibited on or from any unit.

13. Restrictions on Use -Commercial Units. Commercial Units shall be subject to the following restrictions on their use:

(a) All business must comply in all respects with the zoning ordinances of the City of Brevard and with any other applicable government regulations.

(b) The Building may contain a restaurant as a commercial use, but any music or other noise from such a business must be contained so as to not disturb the residential owners.

(c) No nightclub or sexually oriented business shall be allowed.

(d) Signs for commercial units may be placed in common areas or on the exterior of the building with the approval of the Declarant, and shall be subject to regulation by the Association. The cost of maintaining signs shall be paid directly by the individual businesses. No signs shall be allowed which are on or visible through the windows of the second floor.

(e) In the event a business in a commercial unit changes use of the Unit, the owner of the Unit shall be responsible for the then prevailing water usage impact fee assessed by the City of Brevard, in the same manner as if the unit had a separate water meter.

14. Maintenance and Assessments. The Association shall maintain all of the common elements of the condominium, including the limited common elements, and assess all of the units for the costs, pursuant to N.C.G.S. §§47C-3-107 and 113.

If the Association is provided with a Maintenance Manual by the Developer, the maintenance and inspections shall be done in accordance with the Manual if feasible. The Association shall be responsible for the perpetual maintenance of and payment of all common systems on the Property, including stormwater management systems, payment of water and sewer bills for Units on master meters, and payment for trash removal. The Association shall have the power to assess the units as set forth in those statutes, and as follows:

(a) Regular Assessments. The Association shall establish an adequate reserve fund for the periodic maintenance, repair and replacement of the common elements. The Association shall charge each unit on a quarterly or monthly basis a Regular Assessment as its share of the common expenses and its contribution to the reserve fund.

(b) Special Assessments. In addition to the Regular Assessments authorized in subsection (a) above, the Association may charge each unit, in any fiscal year of the Association, a Special Assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction of a capital improvement upon and to any part of the common elements, provided that any such Special Assessment must be approved by the affirmative vote of at least two-thirds (2/3) of all units existing at the time of the vote, cast in person or by proxy at a meeting held in accordance with the bylaws of the Association. If authorized by the Association, Special Assessments may be paid by unit owners in monthly or quarterly installments, as determined by the Board of the Association.

(c) Rates of Regular and Special Assessments. Regular and Special Assessments shall be assessed against all units equally on a per unit basis. Expenses which are unique to one part of the project shall be allocated to those Units, as specified in the attached Schedule. Also, billing for trash removal may be specially apportioned to reflect increased usage by particular Units, such as a restaurant, in the discretion of the Board.

(d) Commencement of Regular and Special Assessments. Each unit shall be and become subject to Regular and Special assessments from and after the date of the first sale of a Unit by Declarant.

(e) Maintenance of Limited Common Elements. Any common expense associated with the maintenance, repair or replacement of a limited common element must be assessed only against the unit to which that limited common element is allocated.

(f) Assessments for Fines. The Association may assess individual units for any fines owed to the Association by the owners of the unit for violations of this Declaration or any Bylaws or Rules and Regulations promulgated by the Association. Any such fine shall not exceed \$150.00 per occurrence (per day).

(g) Certificates of Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association stating whether all assessments against a specified unit have been paid. A properly executed certificate of the Association as to the status of assessments against a unit shall be binding upon the Association as of the date of its issuance.

(h) Payment and Collection of Assessments. Each of the applicable assessments described above, together with any interest and costs of collection (including reasonable attorney's fees), and together with reasonable late fees as established by the Board shall be a lien upon each unit and the personal obligation of all of the owners of such unit. Assessments shall be paid in such manner and on such dates as the board of the Association may establish. No unit owner will be exempt from liability for assessments by non-use of common elements, abandonment of his unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each unit owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action taken by the Association. Any assessment against any unit which remains unpaid for a period of thirty days after delivery of a request for payment shall be past due, and interest shall accrue on any unpaid amount from the date that it became past due at the rate of twelve percent per annum. The Association shall have the power to take whatever action is necessary, at law or in equity, to collect any past due assessment, together with interest, late fees and costs of collection, including reasonable attorney's fees. When an assessment becomes past due, the lien created may be filed by the Association against the delinquent unit owner in the office of the Clerk of Superior Court of Transylvania County. The lien may be foreclosed by the Association in like manner as a Deed of Trust on real estate under power of sale pursuant to Article 2A of Chapter 45 of the North Carolina General Statutes.

(i) Subordination of Lien to First Mortgages. The lien created by subsection (h) above shall be subordinate to the lien of any first mortgage. Sale or transfer of any unit shall not affect the lien of any assessment, except that the sale or transfer of any unit pursuant to mortgage foreclosure or any proceeding in lieu

thereof shall extinguish the lien of any assessment against the unit that first became due prior to such sale or transfer.

(j) Enforcement of Association Rights. If the Association wishes to pursue a claim for a defect in the design or construction of the building against the Developer, builders, architects, or engineers, the claim shall first be evaluated by an independent expert retained by the Association, and voted upon by at least 75% of the unit owners. Such a claim shall be resolved by mediation, or if that process is not successful, by arbitration in accordance with the North Carolina Uniform Arbitration Act. No such claim may be asserted for a loss which occurred in whole or in part as a result of the failure of the Association to comply with the recommendations of the Maintenance Manual.

15. Insurance. The Association shall purchase, maintain in force and administer insurance coverage as provided by N.C.G.S. §47C-3-113. In addition, the Association shall meet the following requirements regarding insurance:

(a) Property Insurance. All common elements of the condominium (including all limited common elements), except land, excavations, foundations and other items normally excluded by property insurance policies, shall be insured by the Association in an amount equal to at least one hundred percent (100%) of their insurable replacement value as determined annually by the Association, with the assistance of the insurance company underwriting the coverage. Such coverage shall provide protection against loss or damage by fire and other hazards or risks covered by a standard extended coverage endorsement.

(b) Liability Insurance. The Association shall acquire and maintain in full force and effect a policy of insurance which insures the Association against any liability arising out of the use, ownership, maintenance and control of the common elements, with limits of liability therefor of not less than \$1,000,000 per occurrence, which policy shall include an endorsement to cover liability of the Association to owners of units.

(c) Other Insurance. There shall also be obtained such other insurance coverage as the Association shall determine to be desirable or as may be required by the Federal Housing Administration, Veterans Administration or Federal National Mortgage Association.

(d) Waiver of Subrogation. All policies of insurance required to be carried shall contain waivers of subrogation if possible.

(e) Qualifications of Insurance Carriers. The Association shall obtain the insurance coverages specified herein only from carriers licensed and admitted to transact business in North Carolina and which have received an A- or better rating by the latest edition of A.M. Best's Insurance Rating Service.

(f) Proceeds. All contracts of property insurance purchased by the Association shall be for the benefit of all of the unit owners and their mortgagees, as their interests may appear, and shall provide that all proceeds shall be payable to the Association or its authorized representative as insurance trustee under this Declaration. Each unit owner and his mortgagee, if any, shall be beneficiaries of each insurance policy in the percentage of the unit owner's undivided interest in the condominium. The sole duty of the Association or its authorized representative as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein. Subject to the provisions of N.C.G.S. §47C-3-113, proceeds of insurance received by the insurance trustee shall be distributed to or for the benefit of the beneficiaries in the following manner:

(i) Proceeds shall first be paid to cover the cost of reconstruction and repair of any damage covered;

(ii) Proceeds shall then be paid to the trustee to reimburse it for costs reasonably incurred in discharging its duties as trustee; and

(iii) Any remaining proceeds shall then be distributed to the beneficiary or beneficiaries of the trust, as their interests may appear.

16. Availability of Documents and Records of the Association. The Association shall make available for examination copies of this Declaration and of all bylaws, rules and regulations, books, records and current financial statements of the Association, to the following: (a) unit owners and their agents and mortgagees, and (b) contract purchasers of units and their agents and prospective mortgagees. Upon written request from any governmental agency holding, insuring or guaranteeing any mortgage against any unit of the condominium, the Association shall provide a copy of a financial statement of the Association for the immediately preceding fiscal year to the requesting agency within a reasonable period of time.

17. Notices to Lenders. Upon written request from any entity holding, insuring or guaranteeing a mortgage against any unit of the condominium, the Association shall provide the requesting entity with timely written notice of:

(a) any proposed amendment to this Declaration;

(b) any proposed termination of the condominium;

(c) any condemnation of or loss, destruction or damage to the condominium which affects a material portion of the condominium or any unit against which there is a mortgage held, insured or guaranteed by the requesting entity;

(d) any delinquency of sixty days or more in payment of any assessments due from the owners of any unit against which there is a mortgage held, insured or guaranteed by the requesting entity; and

(e) any lapse, cancellation or material modification of any insurance coverage held by the Association.

18. General Provisions.

(a) Parties Bound. All persons and entities acquiring any interest in any of the units, including but not limited to lessees, shall be bound by the provisions of this Declaration. All guests and invitees of such persons and entities, and any other occupants of any of the units, shall likewise be bound.

(b) Duration. The provisions of this Declaration shall run with and bind the Property perpetually, unless rescinded pursuant to subsection (c) below.

(c) Amendment or Rescission. This Declaration may be amended or rescinded only by a written instrument executed by the Association and authorized by the affirmative vote of at least two-thirds (2/3) of all units existing at that time, cast in person or by proxy at a meeting duly held in accordance with the bylaws of the Association; provided, however, that this Declaration may be amended by the Declarant at any time within five years of the date of recording of this Declaration, without the approval of the Association or any other party, if the proposed amendment is required to obtain any approval of HUD, FHA, VA, FNMA or FHLMC. Any amendment or rescission shall be recorded at the Transylvania County Registry.

(d) Enforcement. The Declarant, any unit owner or the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, and obligations imposed by this Declaration. The Declarant, the Association or any unit owner may bring any action necessary to enjoin any violation or breach of the provisions of this Declaration, and to recover damages therefor. The Declarant, the Association and any unit owner shall be entitled to recover reasonable attorney's fees incurred in bringing and prosecuting such action

from the breaching or violating unit owner.

(e) Failure to Enforce Not a Waiver. The failure to enforce any right, reservation, covenant or restriction contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so later.

(f) Severability. Invalidation of any one of these covenants or restrictions by court order shall not affect any of the other provisions of this Declaration, which shall remain in full force and effect.

(g) Captions. The captions are inserted only as a matter of convenience and for reference, and shall not be construed to define, limit or describe the scope of any provision of this Declaration.

(h) Law Controlling. This Declaration shall be construed and governed pursuant to the laws of North Carolina.

(i) References to Statutes. All references to any statutory provision shall be construed to include and apply to any future amendments to or replacements of such provision, and all statutes referenced shall be considered to have been incorporated into this Declaration by reference.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its authorized officers and its corporate seal to be affixed hereto on the date shown above.

FRENCH BROAD PLACE, LLC

By: _____
Manager

By: _____
Manager

NORTH CAROLINA
TRANSYLVANIA COUNTY

I, Donald E. Jordan, a Notary Public for the specified County and State, certify that _____, Managers of French Broad Place, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

Witness my hand and official seal this the ____ day of _____, 2008.

My commission expires: August 30, 2009

Notary Public