

BK 5483 PG 1204 - 1258

**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
FOR
7 PATTON AVENUE CONDOMINIUM**

Date: As of October 26, 2016

[Cross Index: Book 5470, Page 1923]

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF
THE FLAG OF THE UNITED STATES OF AMERICA OR STATE OF
NORTH CAROLINA. THIS DOCUMENT REGULATES OR PROHIBITS
THE DISPLAY OF POLITICAL SIGNS.**

**THE RESIDENTIAL UNIT IS SUBJECT TO RENTAL RESTRICTIONS
CONTAINED IN SECTION 7.6 OF THIS DOCUMENT.**

PREPARED BY AND RETURN TO:

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Submitted electronically by "Womble Carlyle Sandridge & Rice LLP"
in compliance with North Carolina statutes governing recordable documents
and the terms of the submitter agreement with the Buncombe County Register of Deeds.

**STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE**

**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM FOR
7 PATTON AVENUE CONDOMINIUM**

This Amended and Restated Declaration of Condominium for 7 Patton Avenue Condominium (this “**Declaration**”) is made as of the 26th day of October, 2016, by **MHG Asheville TR, LLC**, a North Carolina limited liability company (the “**Commercial Declarant**”) and Asheville Arras Residences, LLC (the “**Residential Declarant**”), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled the “North Carolina Condominium Act.”

BACKGROUND STATEMENT

[All words which are capitalized herein shall have the definition ascribed to them within the context of this document itself or as a separately defined term found in Article I of this Declaration.]

A. By Declaration of Condominium for 7 Patton Avenue Condominium (the “**Original Declaration**”) dated September 21, 2016 and recorded in the Buncombe County, North Carolina Registry in Book 5470, Page 1923, MHG-Tower, LLC (“**Original Declarant**”) submitted that certain parcel of real estate located at 7 Patton Avenue, in the City of Asheville, Buncombe County, North Carolina, as more particularly described on Exhibit “A” attached hereto and incorporated herein by reference (the “**Real Property**”) to the condominium regime described in the Original Declaration.

B. The condominium on the Real Property (“**Condominium Property**”) contains two (2) primary units (“**Condominium Units**”) comprised of (1) a commercial condominium unit (“**Commercial Unit**”) and (2) a residential condominium unit (“**Residential Unit**”). The owner of a Unit shall have the right as granted herein subsequently to establish a separate condominium (“**Second Tier Condominium**”) within a Unit.

C. Original Declarant conveyed the Commercial Unit to Commercial Declarant by Special Warranty Deed recorded in the Buncombe County, North Carolina Registry in Book 5470, Page 1977, and Original Declarant assigned all Declarant rights applicable to the Commercial Unit to Commercial Declarant pursuant to that certain Partial Assignment of Declarant Rights for the 7 Patton Avenue Condominium (Commercial Unit) recorded in the Buncombe County, North Carolina Registry in Book 5470, Page 1985.

D. Original Declarant conveyed the Residential Unit to Residential Declarant by Special Warranty Deed recorded in the Buncombe County, North Carolina Registry in Book 5470, Page 1981, and Original Declarant assigned all Declarant rights applicable to the Residential Unit to Residential Declarant pursuant to that certain Partial Assignment of Declarant Rights for the 7 Patton Avenue Condominium (Residential Unit) recorded in the Buncombe County, North Carolina Registry in Book 5470, Page 1989.

E. In accordance with Article XIV of the Original Declaration, Commercial Declarant and Residential Declarant (collectively, “**Declarant**”) as the sole Unit Owners, hereby

amend and restate the Original Declaration in its entirety as follows. From and after the date hereof, this Declaration shall govern and control the Condominium and the Association in all respects.

STATEMENT OF DECLARATION

NOW, THEREFORE, Declarant hereby declares that all of the Condominium Property shall be held, transferred, sold, conveyed, occupied and used subject to the following covenants, conditions, easements, uses, limitations, obligations, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the division of the Condominium Property into Condominium Units, and shall be deemed to run with the land and shall be a burden and benefit to Declarant, its successors and assigns, and any person or entity acquiring or owning an interest in the Condominium Property, and their grantees, successors, heirs, executors, administrators, devisees and assigns.

ARTICLE I DEFINITIONS

Unless it is plainly evident from the context that a different meaning is intended, the following terms, words, and phrases shall have the following meanings when used in this Declaration:

Section 1.1 “Annual Meeting” means the annual meeting of the Members of the Association held within the fourth quarter of each calendar year, upon proper notice, at a date, time and at a place from time to time designated by the Executive Board. The first Annual Meeting of the Members shall be held within one (1) year from the date of incorporation on such date as the initial Executive Board shall determine.

Section 1.2 “Approved Construction Plans” means the engineered drawings and plans for the Commercial Unit and the Residential Unit prepared by Reese Vanderbilt & Associates and dated October 13, 2016, together with any amendments thereto that are approved, if applicable, in accordance with **Section 12.4(b)** below, and any future engineered construction plans for the other Buildings or improvements (or modifications to existing Buildings) located, or to be located within the Units, that are prepared and approved in accordance with **Section 12.4(b)**.

Section 1.3 “Assessments” means the Common Assessment, Special Assessment, and Individual Unit Assessment, all as more fully defined in **Article VII** of the Bylaws.

Section 1.4 “Association” means and refers to 7 Patton Avenue Condominium Owners Association, Inc., a corporation organized and existing under the North Carolina Non-Profit Corporation Act pursuant to and in accordance with this Declaration, the Bylaws, and the North Carolina Condominium Act.

Section 1.5 “Building” means and refers to the building or buildings constructed within the Condominium Units, together with appurtenant improvements. For the avoidance of doubt, the Buildings are not Common Elements and are intended to constitute

“betterments” or “improvements” installed by each Condominium Unit Owner within its respective Condominium Unit, as such terms are used in the North Carolina Condominium Act.

Section 1.6 “Bylaws” means and refers to the Bylaws of the Association, a copy of which is attached hereto as **Exhibit “D”**, and all amendments to such Bylaws which may from time to time be adopted.

Section 1.7 “Common Elements” means and refers to all portions of the Condominium other than the Condominium Units, as depicted on the Plans, and as more particularly described in **Section 5.1** of this Declaration.

Section 1.8 “Common Elements Interest” means and refers to the undivided percentage interest in the Common Elements allocated to each Unit, as set forth on **Exhibit “C”** attached hereto. The Common Elements Interest shall be used to determine each Unit’s share of Common Expenses in the Association and voting rights. Common Elements Interests may be reallocated pursuant to **Section 5.2** or **Section 9.4** if the events described in such provisions occur.

Section 1.9 “Common Expenses” means and refers to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves, pursuant to and in accordance with this Declaration, the Bylaws, and N.C.G.S. §47C-1-103(5).

Section 1.10 “Condominium” means and refers to the 7 Patton Avenue Condominium, as established by the submission of the Condominium Property to the terms of the North Carolina Condominium Act by this Declaration.

Section 1.11 “Condominium Documents” means and refers to this Declaration, the Articles of Incorporation of the Association, the Bylaws, and, when adopted by the Association, the Rules and Regulations, as amended and supplemented from time to time, and all attachments and exhibits thereto which, in addition to the terms and restrictions found in this Declaration, govern the use of the Condominium Property.

Section 1.12 “Condominium Property” means and refers to the Real Property, the Units, the Buildings and other Common Elements, when constructed, which are subjected to this Declaration.

Section 1.13 “Condominium Unit” or “Condominium Units” or “Unit” or “Units” means singularly or collectively the separately constituted area or areas described in this Declaration and created out of the Real Property which Unit or Units are more particularly described in **Article IV** below.

Section 1.14 “Declarant” means and refers, collectively, to MHG Asheville TR, LLC, its successors, or any party to which it collectively or individually assign rights as Declarant under this Declaration, and Asheville Arras Residences, LLC, its successors, or any party to which it collectively or individually assign rights as Declarant under this Declaration. Following recordation of a document transferring to another person or entity all or some of the

Special Declarant Rights, pursuant to Section 20.2 of this Declaration, the term “Declarant” also shall mean and refer to that transferee.

Section 1.15 “Declarant Control Period” means and refers to the period commencing on the date of the recording of this Declaration and continuing until the earlier of: (i) one hundred twenty (120) days after conveyance of seventy-five percent (75%) of the Units to Unit Owners other than the Declarant or any Declarant Developer; (ii) two (2) years after Declarant or any Declarant Developer has ceased to offer Units for sale in the ordinary course of business, or (iii) two (2) years after any development right to add new Units was last exercised. If there are two (2) or more Declarants or Declarant Developers, such Declarants or Declarant Developers shall make decisions regarding the Common Elements during the Declarant Control Period as approved by the Declarant(s) or Declarant Developer(s) having a majority of the Common Elements Interest. Following the expiration of the Declarant Control Period, the Association shall decide matters pursuant to this Declaration.

Section 1.16 “Declarant Developer” means any entity taking title to either or both of the Commercial Unit or the Residential Unit directly from Declarant and prior to the completion of the Project for development purposes.

Section 1.17 “Declaration” means and refers to this Amended and Restated Declaration of Condominium, as it may be amended in the future.

Section 1.18 “Executive Board” means and refers to the governing body from time to time of the Association, as constituted in accordance with the Articles of Incorporation of the Association, the Bylaws and the North Carolina Condominium Act.

Section 1.19 “Commercial Unit” has the meaning ascribed in **Article IV** below.

Section 1.20 “Member” means any person or entity entitled to membership in the Association as provided herein or in the Bylaws.

Section 1.21 “Mortgage” means and refers to a mortgage or deed of trust constituting a lien on a Unit.

Section 1.22 “Mortgagee” means and refers to the owner and holder of the indebtedness secured by a Mortgage on the Commercial Unit that has notified the Association in writing of its name and address, and that it holds a Mortgage on the Commercial Unit. Such notice will be deemed to include a request that the Mortgagee be given the notices and other rights described in **Article XVI**.

Section 1.23 “North Carolina Condominium Act” means and refers to Chapter 47C of the North Carolina General Statutes, as it may be amended from time to time.

Section 1.24 “Owner” or “Unit Owner” means and refers to the record owner, whether one or more persons or entities, of fee simple title to any Unit, but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation. If a Unit is subsequently converted to a condominium (for

example, if the Residential Unit is converted to a Second-Tier Condominium), then the condominium association established in connection with such Second Tier Condominium shall constitute the "Owner" hereunder and the chairman of the executive board of such condominium association shall have the authority to vote and otherwise act on behalf of its association as the "Owner" hereunder.

Section 1.25 "Owner Representative" means the chairman of the executive board of any Second Tier Condominium established within any of the Units.

Section 1.26 "Permittees" shall mean and refer to any of the following who have the permission of an Owner to occupy or be present on or in a Unit at a given point in time: tenants, subtenants, occupants, contractors, subcontractors, agents, employees, licensees, concessionaires, and invitees and their respective officers, directors, contractors, subcontractors, agents, employees, licensees, invitees, customers, vendors, suppliers and visitors. Upon the creation of a sub-condominium regime within any Unit as permitted under this Declaration, each unit owner within such sub-condominium shall be deemed a Permittee and each Permittee of each such sub-unit owner shall be deemed a Permittee of the applicable sub-unit owners.

Section 1.27 "Plans" means the plans, including any amendments thereto, described in 47C-2-109 of the North Carolina Condominium Act that, together with the Plat, delineates the boundaries of the Condominium Units and Condominium Property created from the Real Property. The Plans are recorded under the name of the Condominium in the Unit Ownership File Pages 1483 to 1491, inclusive, in the Office of the Register of Deeds of Buncombe County.

Section 1.28 "Plat" means and refers to the survey, including any amendments thereto, described in 47C-2-109 of the North Carolina Condominium Act that, together with the Plans, delineates the boundaries of the Condominium Units and Condominium Property created from the Real Property. The Plat is recorded under the name of the Condominium in Plat Book 164, at Page 162, in the Office of the Register of Deeds of Buncombe County.

Section 1.29 "Project" means the redevelopment of the existing Building pursuant to drawings from Reese Vanderbilt & Associates, LLC dated October 13, 2016.

Section 1.30 "Residential Unit" has the meaning ascribed in Article IV below.

Section 1.31 "Rules and Regulations" means all rules and regulations adopted by the Unit Owners in accordance with the terms of this Declaration and the Bylaws.

Section 1.32 "Second-Tier Association" means and refers to the condominium association formed with respect to a Second-Tier Condominium.

Section 1.33 "Second-Tier Condominium" means and refers to a condominium formed within a Unit and as further described in **Article IV** below.

Section 1.34 “Second Tier Unit” means and refers to a unit within a Second Tier Condominium and as described in **Article IV** below.

Section 1.35 “Second Tier Unit Owner” means and refers to the owner of a Second Tier Unit.

Section 1.36 “Special Declarant Rights” means the rights reserved for the benefit of Declarant in the Condominium Documents, as more particularly described in Article XX of this Declaration.

Section 1.37 “Unit Owner” has the meaning set forth in Section 1.24 above

Section 1.38 “Utilities Equipment” means and refers to equipment used by each Unit Owner to provide utility services to its respective Building, including without limitation, water, sewer, storm water drainage, gas, electricity, telephone and television service and the connections, systems, pipes, conduits, lines, wires, transformers and any other apparatus necessary for the provision or metering of any utility, and facilities associated therewith, whether public or private.

In addition, the definitions set forth in N.C.G.S. §47C-1-103 are incorporated in this Declaration by reference, and the terms defined therein shall have the meanings set forth therein when used in this Declaration or the Condominium Documents; unless those terms are expressly defined otherwise in this Declaration or unless it is plainly evident from the context that a different meaning is intended.

ARTICLE II DESIGNATION OF CONDOMINIUM

The Condominium Property is located in Buncombe County, North Carolina. The Condominium Property is subjected to the terms of the North Carolina Condominium Act by this Declaration. The name of the Condominium is “7 Patton Avenue Condominium”.

ARTICLE III BUILDINGS AND APPURTENANT IMPROVEMENTS

The Owners will be allowed to redevelop the existing Building and construct appurtenant improvements within the boundaries of their Units. At such time as the exterior walls of the Building and/or appurtenant improvements are moved or adjusted as permitted under this Declaration, the Owners shall cause an update of the Plat and Plans to be completed which locates the Building and appurtenant improvements within the Unit. Such updated Plat and Plans, along with an “As Built” certificate as required by 47C-2-109(6)(a) of the North Carolina Condominium Act, shall be reviewed and approved by the Association and recorded by the Association in the Buncombe County, N.C. Register of Deeds Office, with all expenses paid by the Unit Owner(s) responsible for the construction.

The Plans which were initially recorded under the name of the Condominium in the Unit Ownership File in the Office of the Register of Deeds of Buncombe County on September 21, 2016, are preliminary in nature and designed to facilitate construction and financing of the

Project. Each of the Owner of the Commercial Unit and the Owner of the Residential Unit covenants and agrees to join with the other Owner to amend the Plans after completion of construction to reflect the post-construction boundaries of the Commercial Unit, the Residential Unit and the Common Elements. The agreed boundaries after construction are shown in the drawings from Reese Vanderbilt & Associates, LLC dated October 13, 2016. However, this covenant shall only relate to the Plans; except as otherwise agreed by the Owners, the Declaration itself shall not change in substance except as necessary to substitute new as-built plans following completion of construction of the Project.

ARTICLE IV DESCRIPTION OF UNITS AND DEVELOPMENT OF UNITS

Section 4.1 Location of Units. The location and dimensions of the Condominium Units are shown on the Plat and Plans.

Section 4.2 Units. There are initially a total of two (2) Units within the Condominium, the Commercial Unit and the Residential Unit. The identification for each Unit is set forth on the Plat and Plans. The maximum number of Units shall be six (6).

Section 4.3 Unit Boundaries. The boundaries of each Unit are as follows:

(a) Upper Boundary: There shall be no upper boundary of the Units except as noted on the Plat and Plans as recorded in the Buncombe County, N.C. Register of Deeds Office.

(b) Lower Boundary: There shall be no lower boundary of the Units except as noted on the Plat and Plans as recorded in the Buncombe County, N.C. Register of Deeds Office.

(c) Vertical Boundaries: The vertical boundaries or planes of the Units will be as shown or described on the Plat and Plans as recorded in the Buncombe County, N.C. Register of Deeds Office.

Section 4.4 Development of Units, Second Tier Condominiums and Cooperation:

(a) Each Unit Owner may construct, reconstruct, repair and/or modify any Building and appurtenant improvements within its Unit to the extent permitted by and in strict accordance with the provisions of this Declaration, the Bylaws, applicable law and the Approved Construction Plans. As described in this Declaration, including, without limitation, **Sections 4.5 and 12.4**, each Unit Owner shall have the right to conduct future construction and development activities and/or make changes in the use of a Building and appurtenant improvements within its Unit (referred to collectively as **“Unit Development”** herein), including, but not limited to, the right to subject its Unit and Unit Development as a Second Tier Condominium in accordance with the provisions of the North Carolina Condominium Act for the purposes of forming a Second Tier Condominium. Unless otherwise specifically addressed in this Declaration, no part of a Unit Development shall be considered to be part of the Common Elements of the Condominium.

(b) Subject to the provisions of this Declaration and the Bylaws, the Residential Unit Owner shall cooperate with the Commercial Unit Owner in any construction, reconstruction, improvement, development, use or consolidation of the Commercial Unit Owner's Building which is in accordance with the North Carolina Condominium Act, this Declaration, the Bylaws and all other applicable laws and regulations. Without limiting the generality of the foregoing, upon written request by the Commercial Unit Owner, and subject to the other terms and conditions of this Declaration, including, without limitation, **Section 12.4** below, the Residential Unit Owner shall execute, join in, and in good faith support, any and all applications, approvals, permits, easements, right-of-ways, and other instruments ("**Instruments**") of any kind whatsoever as may be deemed necessary or desirable by the Commercial Unit Owner, in connection with the Commercial Unit Owner's Unit Development. Any easements or rights-of-way granted pursuant to this subsection shall be granted without consideration. In the event that after initial completion of a Building and appurtenant improvements, an Owner desires to undertake construction, reconstruction, improvement, development, use or consolidation of the Unit in accordance with this Declaration which would cause the Plat or Plans no longer to be accurate in accordance with "As Built" guidelines of the North Carolina Condominium Act as set forth in 47C-2-109, then the Plat and Plans shall be revised and updated in accordance with **Article III** above to reflect the current status of the Building and appurtenant improvements within the boundaries of the applicable Unit.

(c) Subject to the provisions of this Declaration and the Bylaws, the Owner of the Commercial Unit shall be permitted and shall have the right to file with respect to the Commercial Unit owned by such Owner (or any portion thereof), and, unless required by a governmental entity, without the joinder or consent of the other Unit Owners, such applications for any amendment to the land use approvals applicable to the Unit, including but not limited to amendments seeking (i) a change of the use of a Unit or (ii) the increase or decrease in the gross floor area permitted of a Unit; provided that, any such request: (x) does not decrease the allowable gross floor area of any other Unit Owner, and (y) does not create a non-conforming use under applicable laws with respect to any of the Buildings outside of such Unit. If a governmental entity does require the joinder or consent of the Residential Unit Owner, then such Owner shall not unreasonably withhold consent.

Section 4.5

Easements to Facilitate Development:

(a) General. The Owners of the Units shall each have a non-exclusive easement, right-of-way and license over and through the Units and the Common Elements in order to access and construct or renovate their respective Buildings and to install and use Utilities Equipment within the Condominium Property, all of which shall be constructed or installed in a good, safe and workmanlike manner, in compliance with the Condominium Documents, applicable laws, and substantially in accordance with the Approved Construction Plans. Buildings constructed on top of Buildings located in other Units in accordance with Approved Construction Plans shall have an easement for subjacent and lateral support (if applicable) consistent with the terms and limitations set forth in the Approved Construction Plans. Following the initial installation of Utilities Equipment, the Owner of each Unit in which Utility Equipment is located shall have the right to relocate such Utilities Equipment at its cost, subject to the terms of **Section 12.4** below.

(b) Manner of Performance. Any Owner constructing improvements within the Condominium Property (including the initial improvements and any Maintenance, Upkeep, Repair, Replacement and Reconstruction Activities), whether within such Owner's Unit or pursuant to an easement, shall be required to: (A) provide the Commercial Unit Owner with written notice reasonably detailing the work to be performed at least ten (10) business days in advance of commencing the work (unless such work is being performed on an emergency basis, in which case the Unit Owner will notify the Commercial Unit Owner as soon as it is practically possible consistent with maintaining the safety of the Building and the Building occupants); (B) if the Residential Unit Owner is constructing such improvements, cause such work to be performed between the hours of 8:30AM and 6:30PM unless otherwise agreed between the affected Owners and in such manner to minimize interference or disturbance of the other Unit Owners and their occupants, tenants, guests and invitees; (C) perform all work in a good and workmanlike manner in compliance with all applicable laws; (D) prior to commencing such work, cause all contractors performing the work to provide evidence of liability and builders risk insurance in an amount reasonably adequate given the work to be performed and, except in connection with emergency repairs, reasonable evidence of such insurance shall be provided to the other Unit Owners upon such other Owner's request; (E) indemnify and hold the other Unit Owners and the Association harmless from and against any claims, damages, losses, injuries or expenses, including, without limitation, reasonable attorneys' fees, which may result from any such work; and (F) during the performance of the work, the Unit Owner causing the work to be performed shall cause all portions of the Condominium Property affected by the work to be maintained in a clean and reasonably safe condition; and, promptly upon completion of the work, such Unit Owner shall clean the work area and other affected areas (as needed) and restore the affected portion of the Condominium Property and facilities therein (including, without limitation, re-seeding, stabilizing and re-planting (if applicable)).

Section 4.6 Limitations on Exercise of Rights and Easements:

(a) The Association or Unit Owners (when exercising easement rights granted or reserved in this Declaration) shall give prior notice to all affected Unit Owners, unless an emergency exists which precludes such prior notice (in which event prompt subsequent notice shall be given).

(b) The Association or Unit Owners or persons providing Utilities Equipment service (when exercising easement rights granted or reserved hereunder) shall:

(i) Minimize any economic or aesthetic injury to the affected Units and the Common Elements;

(ii) Do any work promptly and as expeditiously as possible;

(iii) Not unreasonably interfere with any Unit Owner's use of its Building, Unit or the Common Elements, or with the Association's use of the Common Elements;

(iv) Not interfere with vehicular or pedestrian access to or within the Commercial Unit, without the prior approval of the Commercial Unit Owner;

(v) To the extent practicable, limit any upkeep within an easement area to non prime use hours with respect to the affected Unit and not block access to the other Units or Unit Developments;

(vi) Not change the elevation of any other Unit without the prior written approval of the Unit Owner of the affected Unit, nor change the grade of any Unit owned by others without the prior written approval of the affected Unit Owner; and

(vii) Fully restore, at its own expense, any affected sidewalks, pavement, landscaping and similar appurtenant improvements, and the surface of the Real Property and the surrounding vegetation, to their original condition (to the extent practicable) as soon as possible.

(c) Relocation. If an easement is relocated, the cost of such relocation shall be paid by the party requesting and undertaking the relocation.

(d) Damage. Any damage resulting from the exercise of the rights and easements contained in this Declaration shall be promptly repaired and the site restored to the extent practicable by the person exercising such rights and easements. The cost of such repair and restoration shall be paid by the person exercising such rights and easements.

(e) Non-Exclusive and Perpetual. All rights and easements created by this section are non-exclusive, appurtenant, and perpetual.

Section 4.7 Easement Documentation. Each Unit Owner and the Association shall execute, acknowledge and deliver such documents and Instruments as another Unit Owner shall reasonably request to further evidence the easements granted in this Declaration, including a plat locating any such easement, provided that the terms of such documents and Instruments are subject to and consistent with the terms of the Condominium Documents.

ARTICLE V COMMON ELEMENTS

Section 5.1 Common Elements. The Common Elements include all portions of the Condominium that are not part of the Units (or the Buildings within the Units) and are shared by the Units. Based upon the Plans, the Common Elements include the following:

(a) The Real Property not included in the description of a Unit or Building.

(b) The facilities labeled "Common Elements" on the Plans; and

(c) All tangible personal property, if acquired by the Association, required for the operation and maintenance of any portion the Condominium for which the Association is responsible.

Section 5.2 Undivided Interests of Owners in Common Elements. The percentage interest in the Common Elements allocated to each Unit shall be the Common

Elements Interest for that Unit as set forth on **Exhibit "C"** attached hereto. Except as set forth in **Section 9.4**, the Common Elements Interest allocated to each Unit shall not be changed except with the approval of the Owner(s) having a majority of the Common Elements Interest, except as may be specifically authorized by the Condominium Act or elsewhere in this Declaration. The Declarant has established the Common Elements Interests for the Units as set forth on **Exhibit "C"** which initial Common Elements Interest shall not be based upon the computation described below. When applicable due to a change in Common Elements Interest pursuant to the terms of this Declaration, the Association and the Owners shall cause an amendment to this Declaration to be generated which shall contain a new allocation of Common Elements Interest which shall be substituted for **Exhibit "C"** attached to this Declaration, calculated as follows: the Common Elements Interest of a Unit shall be equal to the quotient (expressed as a percentage) of (i) the square footage allocated to such Unit divided by (ii) the total square footage of all Units.

Section 5.3 **Maintenance of Common Elements.** The Association shall be responsible for the maintenance and repair of all Common Elements.

ARTICLE VI
[INTENTIONALLY DELETED]

ARTICLE VII
RESTRICTIONS ON USE

The following covenants, restrictions, conditions and limitations as to use and occupancy shall run with the land and shall be binding upon each Unit Owner, and each Second Tier Unit Owner, and their respective related parties occupying all or any portion of a Unit or Second Tier Unit, and their respective guests, invitees, tenants, licensees, heirs, executors, administrators, successors and assigns.

Section 7.1 **Compliance With Laws.** All Units shall be used and maintained in compliance with applicable laws and ordinances, as may be amended from time to time.

Section 7.2 **Nuisance.** No obnoxious, offensive or unlawful activity shall be conducted within any Unit, or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an unreasonable annoyance or nuisance to the other Owners, or endanger the health and safety of any Owner. Furthermore, no Unit (or portion thereof) shall be used for:

- (a) a distilling, refining, smelting operation;
- (b) a dry cleaning plant;
- (c) an automobile, truck, trailer or recreational vehicle sales, leasing, repair or body shop operation;
- (d) a veterinary hospital or animal raising facility;
- (e) a mortuary or funeral home;

(f) an establishment selling or exhibiting drug related paraphernalia and/or pornographic materials;

(g) an establishment featuring amplified music;

(h) a liquor store or ABC store (provided that this restriction shall not apply to any restaurant located within the Commercial Unit).

Section 7.3 Noise, Odors, and Disorderly Conduct. The Residential Unit Owner shall not engage in any disorderly conduct on the Condominium Property, or cause or allow any disturbance, including, but not limited to, shouting, singing or playing any musical instruments or electronic equipment (including radios, stereos, televisions, and computer equipment) in a manner that unreasonably disturbs other Owners. The Owner of a Unit shall be responsible for the conduct of such Unit Owner's employees, invitees, guests, tenants and licensees. It shall be the responsibility of the Residential Unit Owner causing or permitting unreasonable sound transmissions to remedy the disturbance. For example, the installation of floor covering may minimize sound transmissions to adjacent Units. No Owner of the Residential Unit shall allow strong, unusual or offensive: odors, fumes, dust or vapors to emanate from the Residential Unit. Notwithstanding anything herein to the contrary, the Owner of the Residential Unit acknowledges that the Commercial Unit has the right to operate for commercial purposes, including, but not limited to, operation of a hotel, restaurant, retail, and/or parking facility, and the Owner of the Residential Unit waives any objection to sounds, activities, and odors typical of such commercial uses.

Section 7.4 Intentionally Deleted.

Section 7.5 Light. When any exterior or surface lighting is required with a Unit, such lighting shall be designed and installed in a way to minimize or even negate the impact of light pollution upon the other Units.

Section 7.6 Non Compete; Rental Restrictions. Excluding Second Tier Units on the 10th floor of the Building, the Residential Unit shall only be used for residential use. Excluding Second Tier Units on the 10th floor of the Building, the Residential Unit shall not be used for operating a hotel or similar lodging facility. Subject to applicable laws, regulations and ordinances (including zoning ordinances), no Second Tier Unit within the Residential Unit may be used for rentals for a period of less than ninety (90) days and such Second Tier Units may not be rented more than one (1) time in any twelve (12) month period. The Commercial Unit Owner's designated property management company shall approve, in its sole and absolute discretion, all renters of any Second Tier Unit within the Residential Unit in advance. Notwithstanding the foregoing, subject to applicable laws, regulations and ordinances (including zoning ordinances), Second Tier Units on the 10th floor of the Building may be rented for periods of less than ninety (90) days and are not subject to the annual limit set forth above, provided that the Commercial Unit Owner's designated property management company manages such rentals and leases pursuant to the terms, conditions and restrictions of a separate rental management agreement. As used in this paragraph, the terms "rentals" and "rented" mean use of the Residential Unit by a party other than the Owner the Residential Unit or Second Tier Unit, as applicable, in exchange for any kind of compensation, monetary or non-monetary. Any form of

advertising or marketing for rentals of a Second Tier Unit within the Residential Unit for less than ninety (90) days is prohibited, except by the Commercial Unit Owner's designated property management company for Second Tier Units on the 10th floor of the Building pursuant to the terms, conditions and restrictions of a separate rental management agreement.

Section 7.7 Prohibitions on Use of Common Elements and Other Property.

The Common Elements shall not be used for storage of personal property of any kind. Driveways within Units and access easements through exit stairwells, corridors, hallways, sidewalks, and other portions of the Units shall not be obstructed in any way which interferes with their intended uses, nor shall such easements be used for other than their intended purposes. In general, no activity shall be carried on nor conditions maintained by any Owner either in such Unit Owner's Unit or upon the Common Elements which despoils the appearance of the Condominium Property or which interferes with the quiet enjoyment of other Owners with respect to their Units and the Common Elements.

Section 7.8 Garbage. Trash, garbage and other waste shall be kept in

sanitary containers within each Unit or transported on a routine basis to the dumpster located in the Commercial Unit as shown on the Plans. All Owners shall take all appropriate steps to avoid odors and creating an environment conducive to vermin.

Section 7.9 Parking. No Owner or any employee, agent, or invitee of any

Owner, shall park, store or keep any vehicle on the Condominium Property except wholly within the parking deck comprising a part of the Commercial Unit, and in particular shall not block any entrances, drive aisles, or fire lanes. Unlicensed, uninsured, or inoperative vehicles may not be parked on the Condominium Property. No auto maintenance and/or repairs may be performed on the Condominium Property. The Owner of the Commercial Unit shall have the right, but not the obligation to tow any vehicle in violation of this **Section 7.9** at its owner's expense. Likewise, the Owner of the Commercial Unit shall have the right to enforce the restrictions contained in this **Section 7.9** and to establish additional rules and regulations regarding the use of the parking spaces and the right to tow any vehicles that violate such restrictions, rules or regulations. For the avoidance of doubt, this Declaration does not establish parking or vehicular access easements within the Commercial Unit or the parking deck located therein. The rights, if any, of Owners other than the Owner of the Commercial Unit to use the parking areas within the Commercial Unit for vehicular access or parking shall be contained in the terms of separate parking leases.

Section 7.10 Leases of Units. With the exception of the granting of licenses

for the use and occupancy of the rooms contemplated to be constructed and included in the operations of the Commercial Unit, any lease of a Unit or portion thereof entered into subsequent to the recordation of this Declaration shall be in writing. The lease also shall provide that the terms of the lease shall be subject in all respects to the Condominium Documents and that any failure by the lessee to comply with all of the terms of such Condominium Documents shall constitute a default under the lease.

Section 7.11 Animals. No animals, fish, livestock, or fowl of any kind shall

be kept or maintained on the Condominium Property or in any Unit by the Owner of the Residential Unit or its Permittees except that up to two (2) common household pets (cats and

dogs only, unless otherwise specifically approved pursuant to the Rules and Regulations) may be kept or maintained in the Residential Unit, provided they are not kept or maintained for commercial purposes. No pet shall be permitted upon the Common Elements or within public portions of Units by the Owner of the Residential Unit or its Permittees unless carried or leashed and accompanied by a person that can control the pet. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) on or around the Condominium Property. Pets shall not be permitted to urinate or defecate in the Common Elements or other portions of the Units absent the written consent of the applicable Unit Owner and only in the areas designated for such purpose, and a person availing himself or herself of the rights granted herein shall clean up immediately after the pet if an accident occurs. All pets shall be registered or inoculated as required by law. Each Unit Owner or Second Tier Unit Owner (as applicable) shall hold the Association harmless from any claim resulting from any action of a pet authorized by this Section to be on the Condominium Property, and shall repair at the pet owner's expense any damage to the Common Elements caused by such pet.

Section 7.12 Utilities. Total electrical usage in any Unit shall not exceed the capacity of the circuits for the Building and appurtenant improvements in that Unit as labeled on the circuit breaker boxes, and no electrical device causing overloading of the standard circuits may be used in any Unit without permission of the Executive Board.

Section 7.13 Floor Load. There shall be no floor load in any Building in excess of the acceptable floor load applicable to the portion of the Building where the load is placed.

Section 7.14 Exterior Design Approval. By execution of this Declaration, the Approved Construction Plans for the Commercial Unit and the Residential Unit have been approved. If following the initial construction of the Building and appurtenant improvements in the other Units, the Owner of a Unit desires to exercise the right to reconstruct, construct additions, make other improvements, or undertake activities that would impact the other Units, then, in addition to any plan approval that may be required in accordance with **Section 12.4** below, the exterior design plans for such Building and appurtenant improvements must be submitted to the Association and the other Unit Owners in order to obtain the consent of the other Owners relating to the plans, and the consent of the Commercial Unit Owner may be withheld in the Commercial Unit Owner's sole and absolute discretion for any such change to the Residential Unit. No exterior design approval is required of the other Unit Owners and the Association pursuant to this **Section 7.14** for proposed changes to the Commercial Unit if, (a) the proposed construction or change is appropriate, compatible, consistent, and harmonious with the urban fabric of downtown Asheville and does not materially detract from the appearance of the existing Buildings and appurtenant improvements within the other Units; and (b) such change is performed in accordance with applicable laws, zoning, and the terms of this Declaration.

If approval is required pursuant to this **Section 7.14**, then any request for approval shall be made in writing in accordance with the terms of **Section 12.4(b)** below. If the Unit Owners are not able to resolve a dispute regarding architectural approval, then the dispute shall be resolved pursuant to **Section 19.2** below.

Section 7.15 Signs. All signs benefiting a specific Unit and its uses and occupancy shall be approved by and be installed in accordance with applicable laws and governmental sign ordinances, including an approved sign package adopted pursuant to the City Code of the City of Asheville. All signs must be maintained solely by such Owner of the Unit within which the sign is located, shall be maintained in a neat and clean condition, shall maintain compliance with governmental rules and regulations, and shall not be permitted to become worn, tattered, faded or otherwise in disrepair.

Section 7.16 Exterior Railings, Knee Walls, Balconies and Terraces. Any exterior railing, knee walls, balconies and terraces constructed on the Condominium Property within the boundaries of a Unit shall be kept in a clean, neat and orderly condition at all times, and shall not be used for the overnight storage of garbage, or the drying of laundry. Towels or banners shall not be hung on such exterior walls or railings, and any dead plants shall be removed promptly. The balconies shall not be used for the storage of bicycles or exercise equipment. No open fires shall be permitted on any part of the Condominium Property, other than fires in fireplaces constituting a portion of a Building.

Section 7.17 Signs and Flags. No signs or other advertising devices shall be displayed on or about the exterior of the Residential Unit or in the Common Elements, except for: (a) reasonable directional signage within the Common Elements as reasonably approved by the Association, (b) professionally manufactured and installed signage, as approved by the Association, identifying the name of the units located in the Residential Unit. for the avoidance of doubt, the following are prohibited within the Residential Unit: "For Lease" or "For Sale" signs, political signs and flags. Any signs displayed as provided above or as may be otherwise permitted by the Association shall be maintained solely by the Owner of such Unit displaying such sign and shall be maintained in a neat and clean condition and shall not be permitted to become worn, tattered, faded or otherwise in disrepair. Notwithstanding the foregoing, Declarant shall have the right to maintain within the Condominium and/or on the exterior of the Commercial Unit and the Residential Unit, professionally printed "For Lease" or "For Sale" signs during the Declarant Control Period, provided those signs comply with applicable governmental regulations. Further, no pole or other device for the display of decorative flags shall be erected or displayed on or about the exterior of any Unit, or in the Common Elements unless approved in advance by the Association. In the event that the Association approves installation of a pole or device for the display of decorative flags, any such flags displayed by an Owner or its Permittees, shall be in good taste and shall not contain lewd or offensive displays or material.

Section 7.18 Sale of Units. The right of a Unit Owner to sell, transfer or otherwise convey that Owner's Unit is not subject to any right of first refusal or similar restriction under this Declaration. To enable the Association to maintain accurate records of the names and addresses of the Unit Owners, each Unit Owner agrees to notify the Association, in writing, within five (5) days after interest in that Unit Owner's Unit has been transferred to another person or entity. In addition, each Unit Owner agrees to provide to a purchaser of that Owner's Unit a copy of the Condominium Documents and all effective Rules and Regulations. Likewise, if a Second Tier Condominium is created, the condominium association formed with respect to such Second Tier Condominium shall notify the Association of the name and address

of the Owner Representative within five (5) days after formation of such Second Tier Condominium.

Section 7.19 Handicap Accessibility. Notwithstanding any other provisions herein, a Unit Owner shall, at such Unit Owner's expense, cause such Unit Owner's Building and Unit to comply with laws applicable to providing physically handicapped persons full enjoyment of such Unit Owner's premises and specifically the Americans with Disabilities Act.

Section 7.20 Standard of Maintenance. Pursuant to **Section 12.1** each Owner shall keep such Unit Owner's respective Unit in a clean, neat and orderly condition and in a good state of maintenance and repair.

Section 7.21 Insurance. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance of the Buildings located in other Units or contents thereof, without the prior written consent of each of the Owners of the affected Units. No Unit Owner shall permit anything to be done or kept in its Building or Unit or in the Common Elements which will result in the cancellation of insurance on a Building constructed within the boundaries of another Unit, or contents thereof, or which would be in violation of any law or the Rules and Regulations. Notwithstanding the intent of the Declarants that the Unit Owner's will each be responsible for insuring their own Buildings as described herein, if (i) the Association becomes obligated to maintain casualty insurance insuring the Buildings and/or any Secondary Units located therein, and (ii) such insurance would not be required if each of the Units were restricted from particular uses, then the Owners will amend this Declaration as appropriate to provide, among other things, that the Unit Owner(s) not willing so to restrict their respective Units shall be obligated for the portion of Common Expenses incurred by the Association to procure and administer such master insurance policy to the extent that such portion of the Common Expenses exceeds the cumulative amount that the other Unit Owners would have incurred to maintain their own casualty insurance in accordance with **Article XI** below. Likewise, each other Owner's share of the additional Common Expense associated with the master casualty policy shall be equal to the cost that it would otherwise have incurred had it procured its own insurance.

Section 7.22 Compliance with Covenants, Conditions and Restrictions. Every Unit Owner and other party described in the first paragraph of this **Article VII** shall comply strictly with the covenants, conditions and restrictions set forth in this Declaration, with the Bylaws and with the Rules and Regulations in relation to the use and operation of the Condominium Property. A violation committed by any persons residing in, occupying or visiting a Unit at the behest or with the implied or express permission of the Unit Owner or any other occupant of the Unit, or committed by any agent, employee, business invitee, or contractor of the Unit Owner or of any person occupying a Unit, shall be attributed to that Unit and the Owner thereof.

Section 7.23 Rules and Regulations. In addition to the use restrictions set forth in this Declaration, reasonable rules and regulations governing the use of the Condominium Property may be established and amended from time to time by the approval of the Owner(s) having a majority of the Common Elements Interest ("**Rules and Regulations**"). Copies of such

Rules and Regulations, when adopted, and amendments thereto shall be executed by the Owners and the Association and recorded in the Buncombe County, N.C. Register of Deeds Office.

Section 7.24 Satellite Dishes and Antennas. Unless otherwise required by law, no exterior satellite dish or antenna may be placed on the exterior of any Residential Unit.

Any action brought by the Association under this Article VII may be brought in its own name, in the name of its Executive Board or in the name of its managing agent.

ARTICLE VIII THE ASSOCIATION

Section 8.1 Organization of Association. A nonprofit North Carolina corporation known and designated as 7 Patton Avenue Condominium Owners Association, Inc. (the “**Association**”) has been organized to provide for the administration of the Condominium Property, and the Association shall administer the operation and maintenance of the Common Elements. The Association shall undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and the North Carolina Condominium Act. A true copy of the Bylaws of the Association is attached hereto as **Exhibit “D”**. Every Owner shall be required to be and shall automatically be a Member of the Association by virtue of ownership in a Unit. In the event that an Owner fails to perform the obligations required of this Declaration, then the Association shall have the right to assume control of and assume the Owner’s obligation(s) which have not been fulfilled.

Section 8.2 Powers; Lien for Assessment. In the administration of the operation and management of the Condominium Property, the Association, through the Executive Board, shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect Assessments in the manner provided in **Article X** below and in the Bylaws, and enforce any Rules and Regulations governing the use of the Units, Common Elements, and otherwise administer and manage the Condominium in accordance with this Declaration and the Bylaws. Any sum assessed by the Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Unit (and the Building within such Unit) with respect to which such sum was assessed upon filing in accordance with N.C.G.S. §47C-3-116, and shall be enforceable by the Association in accordance with N.C.G.S. §47C-3-116 and **Article VII** of the Bylaws. Any lien established pursuant to this **Section 8.2** shall not be affected by the transfer of the Unit other than a transfer as a result of the foreclosure of a first lien Mortgage pursuant to N.C.G.S. § 47C-3-116 (f).

Section 8.3 Appointment of Directors. The Association shall have an Executive Board of five (5) Directors who need not be members of the Association. Prior to the expiration of the Declarant Control Period, the Declarant or Declarant Developer, as Owner of the Commercial Unit, shall appoint three (3) Directors, and the Declarant or Declarant Developer, as Owner of the Residential Unit, shall appoint two (2) Directors. Following the expiration of the Declarant Control Period, the Owner of the Commercial Unit shall appoint three (3) Directors, and the Owner of the Residential Unit (or the Executive Board of any Second-Tier Association, if applicable) shall appoint two (2) Directors.

Section 8.4 Books and Records. The Association shall maintain current copies of: (a) the Condominium Documents, as they may be amended from time to time, (b) any Rules and Regulations adopted by the Owners from time to time; and (c) all financial records of the Association, as required by N.C.G.S. §47C-3-118. These items shall be available for inspection, during normal business hours and upon advance notice, by any Owner, any Mortgagee, any Unit prospective purchaser and any insurer or guarantor of a loan secured by a Mortgage. Any Owner, and at the expense of said Owner, has the right to cause an audited financial statement to be prepared for the preceding fiscal year.

ARTICLE IX EASEMENTS AND PROPERTY RIGHTS

Section 9.1 Access Easements. The Association, or any person authorized by the Executive Board, shall have the right of access to each Unit and Building to the extent necessary for performance by the Association of its obligations of maintenance, repair, reconstruction, or replacement of the Common Elements. Likewise, each Unit Owner shall have a non-exclusive access easement through the other Buildings and Units as reasonably required to conduct Maintenance, Upkeep, Repair, Replacement, and Reconstruction Activities as defined in **Section 12.4** relating to a Unit, a Building and appurtenant improvements related to a Unit as well as utilities, stairways, elevator(s), elevator shafts and foundation, meters, wiring and wire chases, conduit, pipes, flues and other facilities essential for the full and complete enjoyment by a Unit Owner of the owned Building and Unit (collectively “**Essential Facilities**”). It will be necessary for some Essential Facilities to be located outside the boundaries of a Unit as set forth within Approved Construction Plans, but by virtue of this **Section 9.1** and subject to the provisions of **Sections 4.5, 12.4 (a), and 12.4 (b)** access to the Essential Facilities is to be available to each Unit. Furthermore, subject to reasonable rules and regulations determined by the Owner of the Commercial Unit, the Owner of the Residential Unit and its Permittees shall have the non-exclusive right to use and access at least one elevator located in the Commercial Unit to the extent the elevator is located adjacent to the boundaries of the Residential Unit.

Section 9.2 Encroachment Easements for Minor Encroachments. If any portion of the Common Elements when constructed substantially in accordance with Approved Construction Plans, encroaches in a non-material way upon any Unit, or if any Building or appurtenant improvements when constructed substantially in accordance with Approved Construction Plans, encroaches upon any other Unit or upon any portion of the Common Elements (“**Minor Encroachment**”), or if such Minor Encroachment shall occur hereafter as a result of the settling or shifting of a Building and appurtenant improvements, there shall exist a valid easement for the Minor Encroachment and for the maintenance of same for so long as such Building and appurtenant improvements shall stand and exist. If a Building or appurtenant improvements within any Unit, or any portion of the Common Elements is partially or totally destroyed by fire or other casualty, or as a result of condemnation or eminent domain proceedings, and such Building, appurtenant improvements or Common Elements are subsequently rebuilt substantially in accordance with Approved Construction Plans, and there are Minor Encroachments on account thereof upon the Common Elements or parts of the Common Elements or upon any Unit, due to such rebuilding, then such Minor Encroachments shall be permitted, and valid easements for such Minor Encroachments and the maintenance thereof shall exist so long as a Building, appurtenant improvements and/or such encroaching Common

Elements shall exist. Minor Encroachments existing within the easements described above shall be deemed to be permissive and the encroaching Owner shall not be deemed to acquire rights by adverse possession in the Unit within which the Minor Encroachment exists.

Section 9.3 Emergency Access.

(a) In case of any emergency originating in or threatening any Unit or the Common Elements, regardless of whether the Owner is present at the time of such emergency, the Association, or any other person authorized by the Executive Board, and the other Owners shall have the right to enter any Unit or Building or Common Elements for the purpose of remedying or abating the cause of such emergency and making any other necessary repairs, and such right of entry shall be immediate. In addition an easement is hereby granted to the governmental entities which provide public health, safety and welfare services to the Condominium, through and upon the Condominium Property for the purpose of access for police, fire, ambulance and other rescue personnel for the lawful performance of their functions.

(b) Specifically the Building within the Commercial Unit is subject to the easement and right of other Unit Owners and their occupants, guests, licensees, invitees, employees and contractors ("**Benefitted Party**") to utilize all stairways which are part of the Building within the Commercial Unit for emergency exiting and life safety purposes. The easement rights herein granted shall not allow any Benefitted Party to loiter, create a nuisance, or use such stairways in a manner which is inconsistent with the rights, including fire exiting, granted herein.

Section 9.4 Relocation of Boundaries: Subdivision; Partitioning.

(a) Relocation of Boundaries Between Adjoining Units.

(i) Following the recordation of this Declaration, the boundaries between adjoining Units may be relocated only upon application to the Executive Board by the Owners of such adjoining Units ("**Adjoining Owners**") and upon approval by the Executive Board of such application; provided, however, that no such relocation of boundaries shall be binding upon any Mortgagee holding a Mortgage on the Commercial Unit whose boundaries are relocated, unless consented to in writing by such Mortgagee.

(ii) Any such application to the Executive Board must be in such form and contain such information as may be reasonably required by the Executive Board, and shall be accompanied by a plat detailing the proposed relocation of boundaries. Unless the Executive Board determines within thirty (30) days after submission by the Owner of the Commercial Unit of an application (including any supporting plans, engineering reports or other information that the Executive Board may reasonably request) that the proposed relocation of boundaries is unreasonable, the application shall be deemed approved. All such applications to the Executive Board by the Owner of the Residential Unit must be approved by the Executive Board, and the immediately preceding sentence shall not apply to any application by the Owner of the Residential Unit. Upon approval of the proposed relocation of boundaries, the Executive Board shall cause to be prepared and filed, at the Adjoining Owners' expense, an amendment to this Declaration and the Plat and Plans which identifies the Units involved, describes and depicts the

altered boundaries, and gives the dimensions of the altered Units and reallocates among the Adjoining Owners the interests in the Common Elements which were formerly allocated to each affected Unit in the manner determined by the Executive Board. Such amendment shall also contain operative words of conveyance and be signed by the Adjoining Owners and consented to by their Mortgagees, if any, and shall be indexed by the Buncombe County, N.C. Register of Deeds in the names of the Adjoining Owners.

(iii) Subdivision of Units. Nothing herein shall prohibit the establishment of Second Tier Condominiums within the Units.

(b) Partitioning. The interests in the Common Elements allocated to each Unit shall not be conveyed, devised, encumbered, partitioned or otherwise dealt with separately from said Unit, and the interests in the Common Elements allocated to each Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Unit even though such interests are not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon the Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Unit's allocated interests in the Common Elements unless the same purports to convey, devise, encumber or otherwise deal with the entire Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Unit shall be deemed and construed to affect the entire Unit and its allocated interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Unit and its allocated interest in the Common Elements by more than one person or entity as tenants in common, joint tenants, or as tenants by the entirety or any other form permitted by law.

Section 9.5 Conveyance or Encumbrance of Common Elements. While the Condominium Property remains subject to this Declaration and to the provisions of the North Carolina Condominium Act, no conveyances of (except for easements which may be granted or reserved by the Association pursuant to the terms hereof) or security interests or liens of any nature shall arise or be created against the Common Elements by any Residential Unit Owner. Every agreement for the performance of labor or the furnishing of materials to the Common Elements, whether oral or in writing, must provide that it is subject to the provisions of this Declaration and that the right to file a mechanic's lien or other similar lien by reason of labor performed or material furnished is subordinated to this Declaration and to the lien of Assessments provided for in **Section 8.2** of this Declaration. Nothing in this **Section 9.5** shall be construed to limit the right of any Owner to convey or to encumber such Unit Owner's allocated interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of such Unit Owner's Unit.

Section 9.6 Nature of Interest in Unit. Every Unit, together with its allocated interest in the Common Elements and the Building located within such Unit, shall for all purposes be and it is hereby declared to be and to constitute a separate parcel of real property. The Owner of each Unit shall be entitled to the exclusive fee simple ownership and possession of such Unit Owner's Unit (and the Building constructed therein) subject only to the covenants, conditions, restrictions, easements, uses, limitations, obligations, and Rules and Regulations set forth in the Condominium Documents, or adopted pursuant to the terms of this Declaration.

ARTICLE X ASSESSMENTS

Section 10.1 Taxes. Every Unit, together with the Building therein and its allocated interest in the Common Elements, shall be separately assessed and taxed by each assessing authority for all types of taxes authorized by law. Each Owner shall be liable solely for the amount taxed against such Unit Owner's individual Unit, provided, however, real property ad valorem property taxes will not be separately assessed against the Units until the first full calendar year following recordation of the Declaration. The Owners among themselves have agreed that the real property ad valorem taxes applicable to the Condominium Property for the portion of the calendar year following the date that the Declaration is recorded shall be paid by and allocated among the Owners on the basis of each Owners' Common Elements Interest.

Section 10.2 Common Expenses. Except as otherwise provided in this Declaration or in the Bylaws, each Owner shall contribute as its share of the Common Expenses, all in accordance with the definition of "**Common Expenses**" set forth above, the Bylaws, and the provisions of the North Carolina Condominium Act, an amount equal to the Common Expenses multiplied by the respective Owner's share of Common Elements Interest. Common Assessments for all Units may begin as of the date of the first conveyance of a Unit to an Owner or at anytime thereafter as determined by the Owners provided in all events that the Owners shall be solely responsible for the Common Expenses in accordance with the terms of the Condominium Documents and the North Carolina Condominium Act. The due dates for payment of such Common Expenses shall be established by the Executive Board and shall be collected at least Quarterly. The Bylaws also grant the Executive Board the right to impose a Special Assessment and Individual Unit Assessment against the Unit Owners as more particularly described therein.

Section 10.3 Common Surplus. The term "**Common Surplus**" means and refers to all funds and other assets of the Executive Board, including excess of receipts of the Executive Board from Assessments, rents, profits and revenues from whatever source, over the amount of Common Expenses. The Common Surplus shall be owned by the Owners in proportion to their respective allocated Common Elements Interests; provided, however, that the Common Surplus shall be held by the Executive Board and either: (i) deposited in the reserve fund to be used for future Common Expenses; (ii) credited toward Common Expenses for subsequent year(s); or (iii) distributed to the Owners in proportion to their respective allocated Common Elements Interests, subject to the terms, provisions and conditions of this Declaration imposing certain limitations and restrictions upon the use and distribution thereof. Except for distribution of any insurance proceeds, which shall be made in the manner provided in Section 11.6 below, or Eminent Domain pursuant Article XVII or upon termination of the Condominium, any attribution or distribution of Common Surplus which may be made from time to time shall be made to the then Owners in proportion to their respective allocated Common Elements Interests.

ARTICLE XI INSURANCE

Section 11.1 Property Insurance. Each Unit Owner shall obtain and maintain at all times a policy of property insurance on its Building, appurtenant improvements which an Owner constructs within its Unit, each Owner's interest in the Common Elements, and any of the easements contained herein (ISO special form or its equivalent) in an amount not less than one hundred percent (100%) of the replacement cost of the Building and appurtenant improvements at the time such insurance is purchased and at the time of each renewal thereof with a commercially reasonable deductible not in excess of \$50,000.00. Each such policy shall be issued by an insurance company properly licensed to do business in the State of North Carolina, with either (i) "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's *Insurance Reports*, (ii) an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's *Insurance Reports - International Edition*, (iii) an "A" or better rating in Demotech's *Hazard Insurance Financial Stability Ratings*, a "BBBq" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's *Insurer Solvency Review*, or (iv) a "BBB" or better claims-paying ability rating in Standard and Poor's *International Confidential Rating Service*. Each such policy shall provide that the Unit Owner procuring the property insurance is the named insured. Each policy shall contain a standard extended coverage endorsement and a standard "all risk" endorsement (unless the policy contains "broad form" covered causes of loss), and an inflation guard endorsement, if available, an earthquake endorsement, if available, and a building ordinance or law endorsement, if available, as well as a special condominium endorsement providing as follows: for waiver of subrogation against any Owner, and any Owner's employees and agents; that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all mortgagees named in the mortgage clause; that no act or omission by any Owner will preclude recovery upon such policy; and that if, at the time of a loss under the policy, there is other insurance in the name of the Owner of another Unit covering the same risk covered by the policy, each Unit Owner's policy on its Building provides primary insurance. Each property insurance policy shall provide for the issuance of certificates or mortgagee endorsements to each Mortgagee and to the other Unit Owners.

With regard to the Common Elements, the Association shall carry the insurance required of Unit Owners utilizing the same requirements as required for Unit Owners and any Building and appurtenant improvements constructed within a Unit.

The insurance coverage required under this **Section 11.1** shall be reviewed at least annually by the Executive Board. And each Owner shall provide the other Unit Owner's with certificates evidencing compliance with this **Section 11.1** upon request.

Section 11.2 Liability Insurance. The Executive Board shall obtain and maintain one or more policies of commercial general liability insurance in such limits as the Executive Board may, from time to time, determine, covering the Association, each member of the Executive Board, and the managing agent, if any, and each Owner with respect to liability arising out of the use, ownership, maintenance, or repair of the Common Elements; provided, however, that in no event shall the limits of such policy ever be less than \$2,000,000.00 per

occurrence. The Executive Board may satisfy its liability insurance coverage requirements under this **Section 11.2** by means of a primary policy with per occurrence coverage limits of less than \$2,000,000.00, so long as it also maintains one or more “umbrella” or excess liability policies sufficient to provide total coverage in excess of \$2,000,000.00 per occurrence. The liability insurance policies shall include endorsements covering cross liability claims of one insured against another, including the liability of the multiple insureds as a group to one or more insureds, and shall provide that it may not be canceled or substantially modified without at least thirty (30) days’ prior written notice to the Executive Board and to all insureds, including all Owners and Mortgagees holding Mortgages on the Commercial Unit. The Executive Board shall review such limits annually.

Each Owner shall obtain and maintain commercial general liability insurance coverage in the amount of at least \$1,000,000.00 for bodily injury, including deaths of persons and property damage, arising out of a single occurrence. Each Owner shall file a copy of each such individual policy with the Executive Board within thirty (30) days after purchase of a Unit and shall provide, upon renewal, evidence of such renewal.

Section 11.3 Fidelity Coverage. The Executive Board shall obtain fidelity coverage against dishonest acts on the part of all persons handling, or responsible for handling funds belonging to or administered by the Executive Board. Any such fidelity insurance policy must name the Executive Board as the named insured and shall be written in an amount as may be determined by the Executive Board, but in no event less than one-half the annual budgeted amount of Common Expenses, plus the amount of any reserves maintained by the Association. Additionally, the policy must include a provision that calls for no less than ten (10) days’ written notice to the Executive Board prior to cancellation or substantial modification. Any manager hired by the Executive Board shall be required to provide its own fidelity insurance policy which must provide the same coverage and contain the same terms as required by this **Section 11.3**.

Section 11.4 Other Insurance Policies. The Executive Board shall be authorized to obtain such other insurance coverage, including worker’s compensation or employee liability insurance, as the Executive Board shall determine from time to time desirable or necessary.

Section 11.5 Premiums & Deductibles. Premiums upon insurance policies purchased by the Executive Board, and, subject to **Section 7.21**, any amounts paid as a result of a deductible, shall constitute a Common Expense and shall be paid by the Executive Board and charged as a Common Assessment. The Executive Board shall maintain at all times sufficient funds in its reserve account in order to cover the cost of any deductible amounts required under the property insurance policy maintained pursuant to **Section 11.1**. The foregoing notwithstanding, each Unit Owner agrees that if any portion of the Condominium Property which is covered under the Association’s insurance policy is damaged or destroyed by an Owner, or their respective family, invitees, guests, employees, contractors or tenants, then such Owner shall be responsible for paying the lesser of: (a) the insurance deductible due under the Association’s insurance policy; or (b) the cost to repair and/or replace any damage to such property or appurtenant improvements, which amount shall be due within ten (10) days after the delivery of written notice of such costs to the responsible Unit Owner(s) or twenty (20) days after mailing of such notice to the responsible Owner(s) by certified mail, whichever occurs first. In the event, a

Unit Owner refuses or fails to pay the insurance deductible or replacement/repair costs in the time period provided in the preceding sentence, the amount thereof may be advanced by the Executive Board and the amount so advanced shall be assessed to such Owner as an Individual Unit Assessment.

Section 11.6 Distribution of Insurance Proceeds. All insurance policies procured by the Executive Board for the Common Elements shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Executive Board as insurance trustee, and each Owner irrevocably appoints the Executive Board as its attorney-in-fact for that purpose. The sole duty of the Executive Board as insurance trustee shall be to receive such proceeds as are paid and deposit the same with a bank or trust company to be held in trust until either applied to restore the damage to the Common Elements as described in **Article XII** below or distributed as set forth herein and for the benefit of the Owners, any Mortgagee of the Commercial Unit, and any other lienholder in the following shares:

(a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and its Mortgagee or lienholder, if any, each Owner's share to be the same as such Owner's allocated Common Elements Interest.

(b) Proceeds of insurance policies received by the Executive Board as insurance trustee shall be distributed by the Executive Board to or for the benefit of the Owners in the following manner:

(i) If it is determined, as provided in **Article XII** below, that the damaged Common Elements with respect to which the proceeds are paid shall not be reconstructed or repaired, then:

(1) the proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the rest of the Condominium or to raze the remaining damaged appurtenant improvements; and

(2) the remainder of the proceeds shall be distributed to all Owners, its Mortgagee or lienholder, as their interests may appear, in proportion to their respective Common Elements Interests.

(ii) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after payment of such repair costs shall be distributed to the beneficial Owners and their Mortgagees and lienholders, if any, jointly, in proportion to their respective Common Elements Interests.

ARTICLE XII

COVENANTS AND DUTY TO MAINTAIN, REPAIR OR RECONSTRUCT

Section 12.1 Repair and Reconstruction of Common Elements. In the event of damage to or destruction of any Common Element as a result of fire or other casualty, the Executive Board shall arrange for the prompt restoration and replacement of the damaged or destroyed Common Element unless (1) the Condominium is terminated in accordance with the

provisions of **Article XV** below, or (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the Owners by an 80% vote, including 100% approval of Owners of Units not to be rebuilt, decide not to rebuild. Unless one of the preceding three conditions occurs, the Executive Board shall arrange for the prompt repair and restoration of the damaged or destroyed Common Elements, and the Executive Board shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any payment for repair and restoration in excess of the insurance proceeds shall constitute a Common Expense subject to Common Assessment. Any reconstruction or repair shall be in accordance with the Plans.

Section 12.2 Maintenance of Units. The Unit Owner shall be responsible for the maintenance and repair of its Unit and Building and appurtenant improvements constructed within the boundaries of its Unit together with Utilities Equipment for which the Unit Owner has been granted an easement for the operation of its Unit. In order to avoid risks and hazards that will result from lack of routine and concerted maintenance activities, it is the obligation of each Unit Owner to cause its Unit to be maintained in a safe and sanitary condition.

Section 12.3 Repair and Reconstruction of Units. In the event of damage to or destruction of any Building and appurtenant improvements as constructed within boundaries of a Unit, including, but not limited to, any damage which renders the Commercial Unit unusable or structurally unsound, together with Utilities Equipment for which the Unit Owner has been granted an easement for the operation of a Unit, by fire or other casualty, the Unit Owner shall arrange for the prompt restoration (in the event of any damage to the Commercial Unit, the Commercial Unit must be restored such that it is usable and structurally sound) and replacement of such Owner's damaged or destroyed Building and appurtenant improvements, together with Utilities Equipment for which the Unit Owner has been granted an easement for the operation of a Unit, unless (1) the Condominium is terminated in accordance with the provisions of **Article XV** below, or (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the Owners by a 100% vote decide not to rebuild. Unless one of the preceding three conditions occurs, the Unit Owner shall arrange for the prompt repair and restoration of such Owner's damaged or destroyed Building and appurtenant improvements.

Section 12.4 Performance of Maintenance, Upkeep, Repair, Replacement and Reconstruction of a Building and Appurtenant Improvements.

(a) Once a Unit Owner constructs a Building or appurtenant improvements in accordance with **Section 4.5**, such Unit Owner shall be entitled to make alterations, install or repair Utility Equipment, and to undertake maintenance, upkeep or repair activities, or to undertake replacement or reconstruction of its Building (collectively "**Maintenance, Upkeep, Repair, Replacement and Reconstruction Activities**") without the consent of any other Unit Owner provided that such Maintenance, Upkeep, Repair, Replacement, and Reconstruction Activities do not: (i) affect the external appearance of any Building or Unit or the Common Elements (or if they do, then such alteration shall be subject to approval pursuant to **Section 12.4 (b)** below, as applicable); provided, however, such Maintenance, Upkeep, Repair, Replacement, and Reconstruction Activities performed by or at the direction of the Owner of the Commercial Unit which do not affect the external appearance of the Residential Unit shall not require any approval by any other Unit Owner; (ii) directly or indirectly interfere with mechanical systems

serving the Common Elements or the other Buildings or Units, as well as the use and quiet enjoyment of the other Buildings or Units; (iii) cause the other Unit Owners to incur additional costs, increase the cost of maintenance of the other Buildings or Units or the Common Expenses of the Condominium; (iv) result in additional restrictions being imposed upon the other Buildings or Units as a result of building codes or otherwise; or (v) require access to or alteration of any portion of the other Buildings, Units or Common Elements or impose additional loads on the structure or mechanical systems of other Buildings, Units or Common Elements, or (vi) interfere with the continued operation and use of the other Buildings or Units (i.e. as a result of material construction noise, vibration, temporary interruption of utilities, interference resulting from the staging of construction, etc.). In no event shall any Unit Owner cause or permit any actions with respect to its Building or Unit that would result in any portion of the Condominium Property being in violation of applicable laws including zoning.

(b) Should a Unit Owner desire to (i) construct a Building, Utility Facilities, or other initial improvements to or benefitting its Unit or Building other than pursuant to Approved Construction Plans, or (ii) following initial construction in accordance with Approved Construction Plans, to make alterations and/or conduct Maintenance, Upkeep, Repair, Replacement and Reconstruction Activities, to or benefitting the Owner's Building or Unit which impacts the Condominium Property as set forth in **Section 12.4 (a)(i)-(vi)** above, or (iii) modify Approved Construction Plans in a manner which impacts the Condominium Property as set forth in **Section 12.4 (a)(i)-(vi)** above; then the Unit Owner shall be required to obtain the prior written approval of the other Unit Owners. Any request for approval shall be made in writing and shall include detailed plans for the proposed changes together with such other samples or documentation as reasonably necessary to review the effects of the proposed changes. Any proposed structural modification requests shall be accompanied by a certification to the other Unit Owners and Association by a structural engineer which confirms, among other things, that the proposed modifications shall not jeopardize the structure or use of the other Buildings or Unit, or any portion of the Condominium. Provided that any written notice for approval given by the Owner of the Commercial Unit is accompanied by the above information and materials and a letter containing the following caption (in capital letters) on the front page: "**APPROVAL DEEMED GIVEN ABSENT SPECIFIC WRITTEN OBJECTIONS WITHIN FIFTEEN (15) BUSINESS DAYS OF RECEIPT OF THIS NOTICE**", then reviewing Owner must approve or disapprove such request within fifteen (15) business days following submission, and, if any reviewing Owner disapproves such request, it must include with such disapproval specific reasons for disapproval and suggestions of modifications that would likely be approved by the reviewing Owner. A Unit Owner's failure to timely respond to a request for approval made by the Owner of the Commercial Unit as described in the preceding sentence shall be deemed to constitute approval by such Unit Owner. The reviewing Unit Owner shall not be responsible for reviewing, nor shall its approval be deemed approval of, any items from the standpoint of structural safety, soundness, workmanship, materials, usefulness, conformance with building or other codes or industry standards, or compliance with governmental requirements; the approval rights granted in this paragraph are solely for the benefit of the Unit Owner performing the review and neither the other Unit Owners, nor any employees, agents or representatives thereof, shall have any liability to anyone as a result of approvals granted pursuant to this paragraph. If the Unit Owners are not able to resolve a dispute requiring architectural approval, then the dispute shall be resolved pursuant to **Section 19.2** below. Engineered architectural and

construction plans approved, or deemed approved pursuant to this **Section 12.4(b)** shall constitute "Approved Construction Plans."

Section 12.5 Remedies for Failure to Fulfill Maintenance Responsibilities of the Unit Owner. If any Owner breaches its obligation to maintain its Building, Unit and related Utilities Equipment in a good and workmanlike condition and in accordance with **Section 12.2** of this Declaration, or otherwise fails to undertake Maintenance, Upkeep, Repair, Replacement and Reconstruction Activities in accordance with the terms of the Condominium Documents, then, in addition to all other rights and remedies at law or in equity, the other Owner(s) may send written notice to such breaching Owner and, if such obligations are not performed by the breaching Owner within fifteen (15) days from receipt of such notice (if not reasonably capable of being fully performed within fifteen (15) days, such time frame shall be extended for such additional time as may be needed to perform so long as performance commences within such fifteen (15) day period and proceeds continuously, in good faith and with due diligence until completion), then the Owner giving notice shall have the right (without limiting any other rights that may be available) to perform such obligations and bill the breaching Owner for the costs of such performance. If the breaching Owner shall not pay such bill within fifteen (15) days of receipt, then interest shall accrue at the rate of the Prime Lending Rate shown in the Money Rates section of the *Wall Street Journal* plus 6% per annum on the unpaid amount from the time due until paid and the amount owed (including interest and all cost of collection) shall be a lien on the breaching Owner's Unit and Building, which lien may be perfected and foreclosed in the same manner as a materialmen's lien under North Carolina law. Notwithstanding the foregoing, in the event of an emergency, the notice and opportunity to cure provided above shall not be required but, rather, only such notice as may be reasonable under the circumstances shall be required (including telephonic notice or no notice at all); the Owner relying upon the provisions of this sentence shall only perform such work as is reasonably necessary to stabilize the situation and eliminate the emergency situation, and all other or additional work shall require notice and opportunity to cure as provided above.

ARTICLE XIII UNITS SUBJECT TO CONDOMINIUM DOCUMENTS

All present and future Owners, tenants, and occupants of the Units, the Buildings and all Second Tier Owners, if applicable, shall be subject to and shall comply with the provisions of this Declaration, the Bylaws, and any Rules and Regulations as may be adopted in accordance with this Declaration, as all of the foregoing may be amended and supplemented from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit (or portion thereof) shall constitute an agreement that the provisions of this Declaration, the Bylaws and any Rules and Regulations which may be adopted are accepted and ratified by such owner, tenant or occupant, and an agreement that such provisions shall be deemed and taken to be covenants running with the Condominium Property and shall bind any person having at any time any interest or estate in such Building or Unit as though such provisions were made a part of each and every deed of conveyance or lease.

ARTICLE XIV
AMENDMENT TO DECLARATION

Except as otherwise permitted under the North Carolina Condominium Act, this Declaration may be amended only by the approval of the Owner(s) to which sixty-seven percent (67%) of the votes in the Association are allocated, which approval may be by proxy at a meeting duly held in accordance with the provisions of the Bylaws. Unless otherwise provided herein or in the Condominium Act, no amendment to the Declaration shall be effective until executed on behalf of the Executive Board by any officer designated for that purpose and recorded in the office of the Register of Deeds of Buncombe County, North Carolina. Anything to the contrary set forth herein, or in any of the other Condominium Documents, neither the provisions of **Section 19.1** hereof nor the provisions of **Section 19.2** hereof may be modified or amended without the written consent of all "Bound Parties" (as defined in **Section 19.1** hereof). Notwithstanding the foregoing, prior to completion of the Project, this Declaration may be amended by the Declarant and the Declarant Developers.

ARTICLE XV
TERMINATION

The Condominium may be terminated and the Condominium Property removed from the provisions of the North Carolina Condominium Act only by the vote the Unit Owners holding 80% of the Common Elements Interest, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws, and as evidenced by execution of a termination agreement, or ratification thereof, by the requisite number of Owners and Mortgagees. The termination shall comply with the requirements of N.C.G.S. §47C-2-118, and must be recorded in the Buncombe County, N.C. Register of Deeds Office before it becomes effective. Following the recordation of the termination agreement, the interests of the Owners, Mortgagees and other lienholders on the Units in the Condominium Property shall be as provided in N.C.G.S. §47C-2-118.

ARTICLE XVI
RIGHTS RESERVED TO MORTGAGEES

Section 16.1 General Provisions. This **Article XVI** establishes certain standards and covenants for the benefit of Mortgagees. This **Article XVI** is supplemental to, and not in substitution for, any other provisions of the Condominium Documents, but in the event of any conflict between the provisions of the Condominium Documents and the provisions of this **Article XVI**, the provisions of this **Article XVI** shall control.

Section 16.2 Rights of Mortgagees to Examine Books and Records. Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Condominium Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such financial statement and report to be furnished within one hundred twenty (120) days following the end of each fiscal year (following the first full fiscal year).

Section 16.3 Mortgagee's Rights to Notice. Any Mortgagee shall have the right to receive from the Association prompt written notice of the following:

(a) Default under any of the terms and provisions of the Condominium Documents by any owner owning a Unit encumbered by a Mortgage held, insured, or guaranteed by such party, which default remains uncured for a period of sixty (60) days.

(b) Any loss or damage to or condemnation or taking of the Common Elements or any loss or damage to or condemnation or taking of a Unit encumbered by a Mortgage held, insured or guaranteed by such Mortgagee.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Any proposed action by the Association, the Executive Board, or the Owners, which under the terms of the Condominium Documents requires the consent of all or any portion of the Mortgagees.

The failure of any Mortgagee to respond within thirty (30) days to any written request of the Executive Board, sent by registered or certified mail, return receipt requested, or nationally recognized overnight delivery service (signature release required) for approval of or consent to an amendment to the Condominium Documents or wherever Mortgagee approval or consent is required hereunder, shall constitute an implied approval by that Mortgagee of the proposed addition or amendment.

Section 16.4 Consent and Notice Required. Notwithstanding any other provision of this Declaration or the Condominium Documents, no amendment of any material provision of the Condominium Documents described in this **Section 16.4** shall be effective without notice to all Mortgagees, as required by **Section 16.3** and the approval of the Owner(s) having a majority of the Common Elements Interest. A change to any of the following items will be considered material:

(a) Voting rights, except for reallocations resulting from the reallocation of votes among certain Unit Owners as described in **Section 9.4**.

(b) Increases in Assessments that raise the previously assessed amount by more than fifteen percent (15%), assessment liens, or the priority of assessment liens.

(c) Reductions in reserves for maintenance, repair, and replacement of the Common Elements.

(d) Responsibility for maintenance and repairs of the Units and/or the Common Elements.

(e) Reallocation of interests in the Common Elements when Common Elements are reallocated by agreement between Owners of Units in accordance with **Section 9.4**, then only those Owners and only the Mortgagees holding Mortgages on those Units need approve such reallocations.

(f) Redefinition of boundaries of Units, except that when the boundaries of only adjoining Units are involved, then only the Owners of those Units and the Mortgagees holding Mortgages on those Units must approve such action.

(g) Convertibility of Units into Common Elements, or Common Elements into Units.

(h) The expansion or contraction of Condominium or the addition, annexation or withdrawal of property to or from the Condominium.

(i) The requirements for insurance and fidelity bonds.

(j) The imposition of any restrictions on the leasing of Units.

(k) The imposition of any restrictions on an Owner's right to sell or transfer an Owner's Unit.

(l) The restoration or repair of the Condominium Property after casualty damage or partial condemnation in a manner other than that specified in the Condominium Documents.

(m) Any termination of the Condominium after occurrence of substantial destruction or condemnation.

(n) Any provision that expressly benefits the Mortgagees.

(o) Any amendment which would adversely affect a Mortgagee's right or remedies under its Mortgage.

Section 16.5 Enforcement. The provisions of this **Article XVI** are for the benefit of all Mortgagees and their successors, and may be enforced by any of them by any available means.

ARTICLE XVII CONDEMNATION

If all or any part of the Common Elements are taken in condemnation or by eminent domain, the award for such taking shall be distributed in accordance with the procedure set forth in N.C.G.S. §47C-1-107. Provided, however that the proceeds shall first be used to restore the damaged area to a condition compatible with the rest of the Condominium or to raze the remaining damaged appurtenant improvements and thereafter, any remaining proceeds shall be distributed as set forth above. If all or any part of a Building or appurtenant improvements are taken in condemnation or by eminent domain, the award for such taking shall be distributed first to the Mortgagee of such Unit, if a Mortgagee exists for such Unit, then to the Owner of the Unit so condemned or taken by eminent domain and to the extent that the condemnation or eminent domain action results in damage to the Building and appurtenant improvements constructed within said Unit, the Owner of the Unit so impacted shall arrange for the prompt restoration and replacement of the damaged or destroyed Building and appurtenant improvements unless (1) the

Condominium is terminated in accordance with the provisions of **Article XV** above, or (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the Owner(s) having a majority of the Common Elements Interest decides not to rebuild.

ARTICLE XVIII MISCELLANEOUS PROVISIONS

Section 18.1 Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity and enforceability of the remainder of this Declaration, and in such event, all the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

Section 18.2 Waiver. No provisions contained in the Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 18.3 Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provision hereof.

Section 18.4 Law Controlling. This Declaration and the Condominium Documents shall be construed and controlled by and under the laws of the State of North Carolina.

Section 18.5 Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan of condominium ownership as provided in the North Carolina Condominium Act. Throughout this Declaration wherever appropriate, the singular shall include the plural and the masculine gender the feminine or neuter as the context permits or requires.

Section 18.6 Notice Address. Each Owner upon acquisition of its Unit shall be responsible for providing written notice to the Association or any manager hired by the Association, which notice shall specify the name of the Owner and such Owner's Unit address and phone number (which may or may not be the address and phone number of the Unit). The Association and the manager shall be entitled to rely upon such notices for the purpose of all correspondence or notices to such Owner until such Owner provides the Association or its manager with a subsequent written notice which amends the previous notice.

ARTICLE XIX ENFORCEMENT

Section 19.1 Agreement to Encourage Resolution of Disputes Without Litigation. It is the clear intent of the Owners, the Executive Board, and the Association to arbitrate all disputes without litigation. The Owners, the Executive Board and the Association and its officers, Directors and committee members, and any person not otherwise subject to this Declaration who agrees to submit to this Article, or any other contractors, architects, consultants, or engineers retained by an Owner in connection with the design and construction of a Building within the boundaries of a Unit, but excluding Mortgagees (each, a "**Bound Party**" and,

collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Condominium without the emotional and financial costs of litigation. Accordingly, every Claim described in subsection (b) shall be resolved by the alternative dispute resolution procedures set forth in **Section 19.2**.

(b) As used in this Article, the term "**Claim**" shall refer to any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Condominium Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Condominium Documents;

(iii) the design, construction, or quality of a Building and appurtenant improvements within or comprising any portion of a Unit or Common Elements, or the habitability thereof, or the suitability thereof for any particular purpose, including without limitation any Claim based upon any alleged implied or express warranty; and

(iv) the asserted breach of any other duty or obligation owed by Declarant, the Executive Board, any member of the Executive Board or any officer of the Association, except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in **Section 19.2**:

(1) any action or suit by the Association to collect Common Expenses, Assessments or other amounts due from any Owner, including, but not limited to any penalties owed by an Owner for violation of this Declaration or the Rules and Regulations;

(2) any suit by the Association to obtain a temporary restraining order, injunction (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration, the Rules and Regulations or relating to creation and maintenance of community standards;

(3) any suit between Owners, which does not include Declarant, the Association, or any Second-Tier Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Condominium Documents; and

(4) Any suit in which any indispensable party is not a Bound Party.

(c) The provisions of this **Section 19.1** may not be modified or amended without the written consent of all Bound Parties and the Mortgagees.

Section 19.2 Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim (“**Claimant**”) against another Bound Party (“**Respondent**”) shall give written notice to each Respondent and to the Executive Board stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent’s role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) The Claimant’s proposed resolution or remedy; and

(iv) the Claimant’s desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Executive Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Arbitration. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in **Section 19.2(a)** (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect.

(d) Waiver. If the Claimant does not submit the Claim to arbitration within such time, or does not appear for the arbitration hearing when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

(e) Fees and Expenses. The fees and expenses of arbitration shall be paid as set forth in the award and the Association shall not make a Claim against a Bound Party with regard to the matters listed in **Section 19.1(b)(iv)(1)-(4)** above unless the Owners holding a majority of the votes in the Association approve (in writing) the Association’s bringing such claim (and incurring the Common Expense to do so). In the event that the Arbitrator shall determine that a party’s Claim was frivolous and/or in bad faith (“**Frivolous Party**”), then the fees and expenses of the arbitration, including the fees and expenses of counsel for the party not determined to have filed a frivolous and/or bad faith Claim shall be paid or reimbursed as applicable by the Frivolous Party.

(f) Settlement. Any resolution of the Claim through negotiation or arbitration shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award

shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

(g) Limits on Arbitrator's Authority. Notwithstanding any provision of law to the contrary, and without in any way limiting the exclusiveness of arbitration as a remedy for resolving Claims, the Bound Parties acknowledge and agree that the arbitrator in any arbitration proceeding hereunder shall not have authority to do any of the following: (1) join the Claims of multiple Claimants in a single proceeding or certify an arbitration class action or similar proceeding; (2) award punitive or exemplary damages of any sort; or (3) award treble damages or any other damages which are greater than compensatory damages or which are based on a multiple of compensatory damages.

(h) Modification of Statutes of Limitation and Repose. Notwithstanding any provision of law (including any statute of limitations or repose) to the contrary, and without in any way limiting the exclusiveness of arbitration as a remedy for resolving Claims, the Bound Parties agree that any Claim must be asserted in arbitration no later than one (1) year following the date that the essential facts giving rise to the Claim were or reasonably should have been discovered, provided, however, in no event shall any Claim be valid unless it is asserted within three (3) years after the last act of the Respondent giving rise to the claim.

(i) Conflicts Between Arbitration Clauses. In the event that a Claim also falls within the scope of a valid arbitration clause contained in a sales contract for an individual Unit or Second Tier Unit, this Declaration shall control to the extent of any inconsistency.

ARTICLE XX SPECIAL DECLARANT RIGHTS

Section 20.1 Special Declarant Rights. During the Declarant Control Period, Declarant shall have Special Declarant Rights, which are those rights reserved for the benefit of Declarant in the Condominium Documents, and which shall include, without limitation, the following rights:

(a) The right to construct and complete any improvements shown on the Plans as future units and plans.

(b) The right to maintain within the Residential Unit and the Commercial Unit a sales and/or leasing office, model units and signs advertising such Unit.

(c) The right to use easement areas throughout the Common Elements for the purpose of completing construction.

(d) The right to subdivide Units, combine Units, and alter Unit boundaries.

(e) The right to appoint or remove officers of the Association and all members of the Executive Board during the Declarant Control Period (as more particularly described in the Bylaws).

(f) The right to grant easements to third parties over the Common Elements for utility purposes.

(g) The right to exercise any other rights granted to or reserved by Declarant in the Condominium Documents or the North Carolina Condominium Act.

(h) The right to unilaterally amend this Declaration (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, without limitation, the Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Housing Administration or US Department of Veteran Affairs, to make, purchase, insure or guarantee Mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect any Unit in a material way unless the Owner thereof shall consent in writing.

(i) The right of the Declarant to use, and Declarant hereby reserves for itself and its successors and assigns, a non-exclusive easement upon, across, over, in and under the Condominium Property as may be reasonably necessary for the purpose of discharging Declarant's obligations or exercising Special Declarant Rights, whether arising under the Act or this Declaration, including, without limitation: (i) easements for ingress and egress and for installation, replacement, repair and maintenance of drainage ditches and facilities, all utilities, including, but not limited to water, sewer, gas, telephone and electrical, cable and other communication systems and indoor sprinkler systems; and (ii) easements to store materials on the Common Elements and to make such other use of the Common Elements as may be reasonably necessary or incident to the construction of the Building and other improvements on the Condominium Property.

Section 20.2 Transfer of Special Declarant Rights. Declarant may transfer any Special Declarant Rights to any person or entity, by an instrument evidencing the transfer duly recorded in the Office of the Register of Deeds for Buncombe County, North Carolina. The instrument shall not be effective unless it is executed by the transferor and the transferee. Upon the transfer of any Special Declarant Rights, the liability of the transferor and the transferee shall be as set forth in N.C. Gen. Stat. § 47C-3-104.

[Declarant Signature Follows on Next Page]

IN WITNESS WHEREOF, the Commercial Declarant has hereunto set his hand, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers, the day and year first above written.

MHG ASHEVILLE TR, LLC,
a North Carolina limited liability company

By: McKibbon Hotel Group, Inc., a Georgia corporation, as Manager

By: Wesley B. Townson
Name: Wesley B. Townson
Title: Vice President

STATE OF Georgia
COUNTY OF Hall

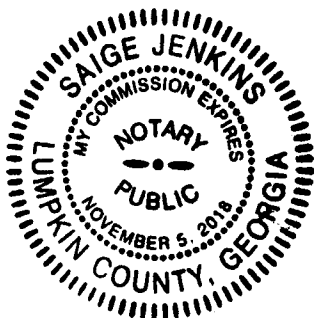
I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Wesley B. Townson, Vice President of McKibbon Hotel Group, Inc., Manager of MHG Asheville TR, LLC.

Date: 10.25.2016

Saige Jenkins
(official signature of Notary)
Saige Jenkins, Notary Public
(Notary's printed or typed name)

(Official Seal)

My commission expires: 11.5.2018



IN WITNESS WHEREOF, the Residential Declarant has hereunto set his hand, or if corporate, has caused this instrument to be signed in its corporate name by its duly authorized officers, the day and year first above written.

ASHEVILLE ARRAS RESIDENCES, LLC,

a North Carolina limited liability company

By: McKibbon Hotel Group, Inc., a Georgia corporation, as Manager

By: Wesley B. Townson
Name: Wesley B. Townson
Title: Vice President

STATE OF Georgia
COUNTY OF Hall

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document: Wesley B. Townson, Vice President of McKibbon Hotel Group, Inc., Manager of Asheville Arras Residences, LLC.

Date: 10-25-2016

Saige Jenkins
(Official Signature of Notary)
Saige Jenkins, Notary Public
(Notary's printed or typed name)

(Official Seal)

My commission expires: 11-5-2018



EXHIBIT A
TO
DECLARATION OF CONDOMINIUM

“Real Property”

BEING all of those two parcels of property as shown on Plat entitled “Property of the Northwestern Bank,” recorded in Plat Book 45, at Page 133, of the Buncombe County, N.C., Register’s Office and also recorded and described in Deed Book 1541, at Page 740, Tracts Two and Three, of the same registry and being further described as follows;

Beginning at a magnetic nail set flush at the corner of a brick retaining wall, said nail being located at the intersection of the southern right-of-way of College Street and the public sidewalk located on the western side of North Pack Square (U.S. Highway 25), sometimes referred to as Broadway Avenue, and being located the following two courses from the point of beginning described in Tract One as described in Deed from Tower Associates, Inc. to MHG-Tower, LLC dated November 5, 2013, recorded in Book 5160, Page 1146, of the Buncombe County, N.C. Register’s Office:

1) South 78°06’27” West 213.41 feet and 2) South 44°13’15” West a distance of 86.48 feet; thence from the Point of Beginning thus established, with the western margin of the public space known as Pack Square the following three courses: 1) with the base of the brick retaining wall at the back of concrete sidewalk, South 11°59’13” East a distance of 29.40 feet to a magnetic nail set at the intersection of the brick retaining wall base with that of a brick planter; 2) with the base of the brick retaining wall, South 78°18’10” West a distance of 14.77 feet and 3) South 11°42’04” East a distance of 111.06’ to a magnetic nail set at the intersection of the western margin of Pack Square with the northern right-of-way of Patton Avenue; thence with the northern right-of-way of Patton Avenue, for a distance with the base of a brick retaining wall and generally with the back of sidewalk, South 78°27’40” West a total distance of 183.17 feet to a magnetic nail set flush in the sidewalk at the intersection of the northern right-of-way of Patton Avenue with the eastern right-of-way of Lexington Avenue, passing a magnetic nail set flush near a concrete curb at a distance of 119.04 feet, said nail at the common southern corner of Tracts Two and Three described in Deed Book 1541 at Page 740; thence with the western right-of-way of Lexington Avenue and the eastern line of the property shown on Plat Book 46 at Page 48 and with the back of concrete sidewalk, North 12°30’32” West a distance of 139.97 feet to a magnetic nail set in a concrete sidewalk at the intersection of the western right-of-way of Lexington Avenue and the southern right-of-way of College Street; thence with the southern right-of-way of College Street, for a distance with the base of a brick retaining wall, North 78°18’10” East, passing a magnetic nail set near a concrete curb at a distance of 65.51 feet, said nail at the common northern corner of Tracts Two and Three previously mentioned, a total distance of 199.76 feet to the Point of Beginning containing 0.602 acres more or less as shown on plat of survey entitled “ALTA/ACSM Land Title Survey of property owned by Tower Associates, Inc” dated September 26, 2013, by Ed Holmes & Associates Land Surveyors.

The street address of the Real Property is 7 Patton Avenue, Asheville, NC 28801.
PIN: 9649-40-2414

See also Deed Book 5160, Page 1146, Buncombe County Registry.

EXHIBIT B
TO
DECLARATION OF CONDOMINIUM

LEGAL DESCRIPTIONS OF UNITS

The Units comprising the Condominium are designated as the “Commercial Unit” and the “Residential Unit”. The Units are fully described and accurately depicted on the Plans of each Unit as recorded in Unit Ownership File Pages 1483 to 1491, inclusive, of the Buncombe County, N.C. Register’s Office, referenced to said Plans being made for a more particular description, respectively, of the Commercial Unit and the Residential Unit.

EXHIBIT C
TO
DECLARATION OF CONDOMINIUM

Schedule of Units and Common Element Interests

<u>UNIT NAME</u>	<u>PERCENTAGE OF UNDIVIDED INTEREST</u>
Commercial Unit	62.2%
Residential Unit	37.8%
TOTAL:	100.0%

EXHIBIT D

BYLAWS OF

7 PATTON AVENUE CONDOMINIUM OWNERS ASSOCIATION, INC.

ARTICLE I DEFINITIONS

The words, phrases and terms used in these Bylaws shall have the meanings as set forth in the Declaration of Condominium for 7 Patton Avenue Condominium ("**Declaration**"), recorded in the Office of the Register of Deeds for Buncombe County, North Carolina, to which a copy of these Bylaws is attached as an Exhibit D.

ARTICLE II ADMINISTRATION OF CONDOMINIUM

Section 2.1. Authority and Responsibility. Except as otherwise specifically provided in the Condominium Documents, the Association shall be responsible for administering, operating, maintaining, and managing the Common Elements.

Section 2.2. Official Action. Unless specifically required in the Condominium Documents, all actions taken or to be taken by the Association shall be valid when such are approved by the Executive Board as hereinafter set forth or when taken by the committee, person or entity to whom such authority has been duly delegated by the Executive Board as set forth in the Condominium Documents or these Bylaws. The Association, its Executive Board, officers and members shall at all times act in conformity with the Nonprofit Corporation Act of the State of North Carolina, the Condominium Documents, and the North Carolina Condominium Act.

ARTICLE III OFFICES - SEAL - FISCAL YEAR

Section 3.1. Principal Office and Registered Office. The initial principal office and registered office of the Association shall be located at 327 Hillsborough Street, Raleigh, NC 27603.

Section 3.2. Other Offices. The Association may have other offices at such other places within the State of North Carolina as the Executive Board may from time to time determine or as the affairs of the Association may require.

Section 3.3. Seal. As permitted by North Carolina law, the Association shall not be required to keep a formal seal.

Section 3.4. Fiscal Year. The fiscal year of the Association shall be the calendar year.

ARTICLE IV MEMBERSHIP

Section 4.1. Qualification. Membership in the Association shall be limited to the Owners, and every Owner of a Unit shall automatically be a member of the Association (“**Member**”). Membership in the Association shall be appurtenant to and may not be separated from Unit ownership.

Membership in the Association shall inure automatically to Owners upon acquisition of the fee simple title (whether encumbered or not) to any one or more Units. The date of recordation in the Office of the Register of Deeds of Buncombe County, North Carolina of the conveyance of the Unit in question shall govern the date of ownership of each particular Unit. However, in the case of death, the transfer of ownership shall occur on date of death in the case of intestacy or date of probate of the will in the case of testacy. Until a decedent’s will is probated, the Association may rely on the presumption that a deceased Owner died intestate.

Section 4.2. Place of Meetings. All meetings of the membership shall be held at a place in Buncombe County, North Carolina designated by the Executive Board.

Section 4.3. Annual Meetings. The first meeting of the Members, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Each subsequent Annual Meeting of the Members shall be held within the fourth quarter of each calendar year, upon proper notice, at a date, time and place as may be reasonably set by the Executive Board. If the day for the Annual Meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday. Each Annual Meeting shall be open to all Members. At such meetings, the Executive Board shall be elected in accordance with **Section 5.3** of these Bylaws, and the Members shall transact such other business as may properly come before them.

Section 4.4. Substitute Annual Meetings. If an Annual Meeting shall not be held on the day designated by these Bylaws, a Substitute Annual Meeting may be called in accordance with the provisions of **Sections 4.5** and **4.6**. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

Section 4.5. Special Meetings. After the first Annual Meeting of the Members, special meetings of the Members may be called by the President, a majority of the Executive Board, or by Unit Owners having not less than twenty percent (20%) of the votes in the Association. Upon receipt of a request for a Special Meeting by an Owner, the President shall immediately cause written notice to be given of the meeting to be held on a date not less than seven (7) nor more than thirty (30) days after receipt of this request. If written notice is not given within ten (10) days after the delivery of the request, the Unit Owner(s) making the request may call the meeting and give written notice of it. Business to be acted upon at all Special Meetings shall be confined to the subjects stated in the notice of such meeting.

Section 4.6. Notices of Meetings. Written or printed notice stating the time and place of a membership meeting, including Annual Meetings, and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, any budget

changes, and any proposal to remove a director or officer, shall be delivered not less than ten (10) or more than thirty (30) days before the date of any such membership meeting, either personally or by mail, by or at the discretion of the President or the Secretary, to the address of each Unit. Notice shall be deemed given one (1) day after deposit of the notice with a nationally recognized overnight delivery service (signature release required) addressed to the Unit Owner at the last address on file with the Association.

Notice given to any one tenant in common, tenant by entirety or other joint Owner of a Unit shall be deemed notice to all joint Owners of the subject Unit.

The notice of a meeting shall specifically state the purpose or purposes for which the meeting is called. Notice of the date, time, place, and purpose(s) of any meeting of Unit Owners may be waived by any Unit Owner, before or after the meeting, by a writing filed with the records of the Association. The attendance of any Unit Owner at any meeting without protesting, before or at the beginning of the meeting, the lack of proper notice shall be deemed a waiver by the Unit Owner of notice of the meeting.

Section 4.7. Quorum. Except as may be otherwise provided by law, the Articles of Incorporation, the Declaration, or these Bylaws, there shall be a quorum at any meeting of Unit Owners where Unit Owners who hold more than fifty percent (50%) of the total voting power in the Association are present in person or by proxy. For a vote on any matter to be valid, the quorum requirement must be met at the time of completion of that vote. If such quorum shall not be present or represented at any meeting, a majority of the Members entitled to vote thereat, shall have power to adjourn that meeting to a day which is not more than one (1) week from the day the original meeting was called. Notice of the adjournment may not be given if the time and place to which the meeting is adjourned are fixed and announced at the original meeting.

Section 4.8. Proxies. At all meetings of Members of the Association, each Member may vote in person or by proxy. The person designated a proxy need not be a Unit Owner. Except that the Executive Board may waive this time requirement for a particular meeting if the waiver would not delay the meeting and would otherwise be fair and reasonable, all proxies shall be in writing and filed with the Secretary at least twenty-four (24) hours prior to the meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his/her Unit, except as otherwise provided in the Declaration or the Articles of Incorporation, about the proxy given to the Declarant. If a first Mortgagee has been designated a proxy under the terms of a first mortgage covering a Unit, the presentation to the Executive Board of a copy of the mortgage containing the proxy designation shall be notice of that designation, and, if the mortgage so states, of the irrevocability of that designation.

Section 4.9. Voting. Each Member's vote shall equal its Common Elements Interest in the Condominium; provided that if a Unit shall be owned by more than one (1) Unit Owner, such Unit Owners shall be deemed to constitute a single Member as to such Unit for purposes of this Section.

Unless otherwise expressly set forth by law, the Declaration, the Articles of Incorporation or these Bylaws, the affirmative vote of more than fifty percent (50%) of the voting power in the Association shall determine that matter.

Section 4.10. Order of Business. The order of business at all meetings of Members shall be as follows. (1) calling of meeting to order; (2) roll call; determination of whether there is a quorum; (3) proof of notice of meeting or waiver of notice; (4) reading of minutes of previous meeting; (5) report of Directors; (6) report of committees; (7) election of the Executive Board (when appropriate); (8) unfinished and/or old business; (9) new business; (10) adjournment.

Section 4.11. Action by Association Members Without a Meeting. Any action which may be authorized or taken at a meeting of the Members may be authorized or taken without a meeting in a writing or writings signed by all Members which writing(s) shall be filed with the records of the Association. Written notice of any action proposed to be taken by such written consent of Members shall be sent to all parties who are entitled to notices under the Declaration not less than seven (7) days prior to commencing the circulation of the action for written consent among the Members.

ARTICLE V EXECUTIVE BOARD

Section 5.1. General Powers. The business and affairs of the Association shall be managed by the Executive Board or by such committees as the Executive Board may establish pursuant to **Article VI** of these Bylaws. Provided, however, the Executive Board may not act on behalf of the Association to amend the Declaration, to terminate the Condominium, to elect members ("**Director(s)**") of the Executive Board, or to determine the qualifications, powers and duties, or terms of office of Directors.

Section 5.2. Number, Term and Qualification. There shall be five (5) Directors of the Executive Board. The Owner of the Commercial Unit shall appoint three (3) Directors, and the Owner of the Residential Unit (or the Executive Board of any Second-Tier Association, if applicable) shall appoint two (2) Directors. Directors need not be Unit Owners. Directors shall serve without compensation.

Section 5.3. Election of Directors. Each Unit Owner shall elect or appoint its respective Director(s) by written notice to the other Unit Owners.

Section 5.4. Removal. Any Director may be removed at any time by the Owner of the Unit who appointed the Director. If any Directors are so removed, their successors as Directors shall be simultaneously appointed by the Owner removing the Director.

Section 5.5. Vacancies. Subject to **Section 5.4** above, a vacancy occurring in the Executive Board shall be filled by the written designation of the Owner of the Unit who appointed the Director whose seat is being filled (i.e. the Commercial Unit Owner shall replace the two (2) Directors appointed by it and the Residential Unit Owner shall replace the one (1) Director appointed by it).

Section 5.6. Chair. A Director shall be elected as Chair of the Executive Board by the Directors at the first meeting of the Board. The Chair shall preside at all meetings of the Executive Board and perform such other duties as may be directed by the Executive Board. Prior to election of a Chair and/or in the event that the Chair is not present at any meeting of the Executive Board, the Vice Chair shall preside.

Section 5.7. Compensation. No Director shall receive any compensation from the Association for acting as such. Provided, however, each Director shall be reimbursed for reasonable, budgeted, out-of-pocket expenses incurred and paid by him on behalf of the Association, and nothing herein shall prohibit the Executive Board from compensating a Director for unusual and extraordinary services rendered on the basis of quantum meruit, provided that such compensation must be approved by the Owner(s) having a majority of the Common Elements Interest. Further provided, each Director, by assuming office, waives his/her right to institute suit against or make claim upon the Association for compensation based upon quantum meruit.

Section 5.8. Loans to Directors and Officers. No loans shall be made by the Association to its Directors of the Executive Board.

Section 5.9. Liability of Directors of the Executive Board. To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act in effect at the applicable time, each Director is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his/her activities as a Director. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

Section 5.10. Meetings of the Executive Board.

A. **Regular Meeting.** Regular Meetings shall be held, without notice, at such hour and address as may be fixed from time to time by resolution of the Board. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

B. **Special Meetings.** Special Meetings shall be held when called by the Chair of the Association, or by any Director, after not less than seven (7) or more than thirty (30) days written notice to each Director.

C. **Notices of Special Meetings.** The notice provided for herein may be waived by written instrument signed by those Directors who do not receive said notice. Except to the extent otherwise required by law, the purpose of a Directors' special meeting need not be stated in the notice. Notices shall be deemed received upon the happening of any one of the following events. (1) one day following deposit of same with a nationally recognized overnight delivery service (signature release required) and addressed to the Director at his last known address on file with the Association; (2) deposit of same at the Unit mail box; (3) delivery in person to the Director. Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting unless the subject Director gives a written statement at the meeting to the person presiding objecting to the transaction of any business because the meeting is not lawfully called and gives such notice prior to the vote on any resolution.

D. **Approved Meeting Place.** All Board meetings shall be held in Buncombe County, North Carolina.

E. **Quorum.** The majority of the Directors then holding office shall constitute a quorum for the transaction of business and every act or decision done or made the Directors at

a duly held meeting at which a quorum is present shall be regarded as the act or decision of the Board.

Section 5.11. Action Without Meeting. The Executive Board Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors of the Executive Board. Any action so approved shall have the same effect as though taken at a meeting of the Executive Board. Said written approval shall be filed with the minutes of the proceedings of the Executive Board, whether done before or after the action so taken.

Section 5.12. Presumption of Assent. A Director who is present at a meeting of the Executive Board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his/her contrary vote is recorded or his dissent is otherwise entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a Director who voted in favor of such action.

Section 5.13. Powers and Duties. The Executive Board shall have the authority to exercise all powers and duties of the Association necessary for the administration of the affairs of the Condominium except such powers and duties as by law or by the Condominium Documents may not be delegated by the Owners to the Executive Board. The powers and duties to be exercised by the Executive Board shall include, but shall not be limited to, the following:

A. Operation, care, upkeep and maintenance of the "Common Elements" to the extent such operation, care, upkeep, and maintenance is not the obligation of the Owners;

B. Determination of the funds required for operation, administration, maintenance and other affairs of the Condominium and collection of the Common Expenses from the Owners, as provided in the Condominium Documents;

C. Employment and dismissal of personnel (including without limitation the Independent Manager [as defined in **Section 5.14** below], if one ever be employed by the Association) necessary for the efficient operation, maintenance, repair, and replacement of the Common Elements;

D. Adoption of Rules and Regulations covering the details of the operation, maintenance, repair, replacement, use and modification of the Units and Common Elements;

E. Opening of bank accounts on behalf of the Association and designating the signatories required therefore (provided, however, that two (2) Directors of the Executive Board must sign any checks (or approve any transfers) from any reserve account);

F. Obtaining insurance as required or permitted under the terms of the applicable provisions of the Declaration;

G. Keeping detailed, accurate records of the receipts and expenditures of the Association; obtaining annual audits of the financial records of the Association from the Association's public accountant; furnishing the annual reports; and furnishing current budgets. All books and records shall be kept in accordance with good and accepted accounting practices and the same shall be available for examination by all Owners or their duly authorized agents or attorneys, at convenient hours on working days;

H. Keeping a complete record of the minutes of all meetings of the Executive Board and Membership in which minute book shall be inserted actions taken by the Executive Board and/or Directors by consent without meeting;

I. Supervising all contractors, agents and employees of the Association and insuring that their duties are properly performed;

J. Enforcing, on behalf of the Association, the obligations and assessments provided in the Declaration, including, but not limited to, the institution of civil actions to enforce payment of the Assessments as provided in the Declaration, the institution of actions to foreclose liens for such Assessments in accordance with the terms of N.C.G.S. §47C-3-116, the imposition of charges for late payment of Assessments;

K. Making of repairs, additions, and improvements to or alterations or restoration of the Common Elements in accordance with the other provisions of these Bylaws and the Declaration, after damage or destruction by fire or other casualty, or as a result of a condemnation or eminent domain proceeding;

L. Enforcing by any legal means or proceeding the provisions of the Articles of Incorporation of the Association, these Bylaws, the Declaration or the Rules and Regulations hereinafter promulgated governing use of the Common Elements;

M. Paying all taxes and assessments which are or may become liens against any part of the Condominium, other than the Units, and to assess the same against the Owners in the manner herein provided;

N. Hiring attorneys and other professionals;

O. Maintaining and repairing any Unit, if such maintenance or repair is required by the Declaration or is necessary in the discretion of the Executive Board to protect the Common Elements or any other Unit or if the Owner of such Unit has failed or refused to perform such maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair has been delivered or mailed by the Executive Board to said Owner, provided that the Executive Board shall levy an Individual Unit Assessment (as hereinafter defined) against such Owner for the costs of said maintenance or repair;

P. Entering any Unit when necessary in connection with any maintenance or construction for which the Executive Board is responsible; provided, such entry shall be made during reasonable hours with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Executive Board and such expenses shall be

treated as a Common Expense; and entering any Unit for the purpose of correcting or abating any condition or situation deemed by the Executive Board to be an emergency;

Q. Signing all agreements, contracts, deeds and vouchers for payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Executive Board. In the absence of such determination by the Executive Board, such documents shall be signed by the Chair and countersigned by any Executive Board Director;

R. Furnishing certificates setting forth the amounts of unpaid Assessments that have been levied upon a Unit to the Owner or Mortgagee of such Unit, or a proposed purchaser or Mortgagee of such Unit, and imposing and collecting reasonable charges therefor; and

S. Exercising any other powers and duties reserved to the Association exercisable by the Executive Board in the Declaration, the Articles of Incorporation, these Bylaws, or the North Carolina Condominium Act.

Section 5.14. Independent Manager. The Executive Board in its discretion may employ or enter into a management contract with any individual, firm or entity it deems appropriate and in the best interest of the Association concerning the routine management of the Condominium / Common Elements. The Executive Board may delegate to such person, firm or entity (referred to in these Bylaws as “**Independent Manager**”) such duties and responsibilities in the management of the Condominium Property as the Executive Board deems appropriate. Provided, the Executive Board may not delegate to the Independent Manager the complete and total responsibilities and duties of the Association in violation of the Nonprofit Corporation Act of North Carolina or the North Carolina Condominium Act. Furthermore, in no event shall the Independent Manager be authorized to draw checks on or transfer funds from any reserve account maintained by the Association. The Independent Manager’s contract shall be for a term not to exceed three (3) years, renewable by agreement between the Executive Board and such Independent Manager for successive one-year terms; provided, however, that any such contract shall provide that it is terminable by the Association, with or without cause, upon not less than ninety (90) days, prior written notice and without payment of any penalty. The Executive Board shall have authority to fix the reasonable compensation for the Independent Manager. The Independent Manager shall at all times be answerable to the Executive Board and subject to its direction.

ARTICLE VI OFFICERS

Section 6.1. Enumeration of Officers. The officers of the Association shall consist of a Director designated as Chair, a Director designated as Vice Chair, and a Director designated as Secretary/Treasurer.

Section 6.2. Designation and Term. The officers of the Association shall be designated annually by the Executive Board. Such designations shall be held at the first meeting of the Executive Board next following the Annual or Substitute Annual Meeting of the Members. Each

officer shall hold office until his death, resignation, removal or until his successor is elected and qualified.

Section 6.3. Resignation and Removal. The Executive Board may remove any officer at any time, with or without cause, by a majority vote of the Directors. Any officer may resign at any time by giving written notice to the Executive Board. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.4. Vacancy. A vacancy in any office may be filled by appointment of the Executive Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 6.5. Multiple Offices. No Executive Committee Member may hold more than one office.

Section 6.6. Chair. The Chair shall be the chief executive officer of the Association and shall preside at all meetings of the Members and the Executive Board. He shall see that the orders and resolutions of the Executive Board are carried out; upon the direction of the Executive Board, he shall sign all written instruments regarding the Common Elements and co-sign all promissory notes of the Association, if any.

Section 6.7. Vice Chair. The Vice Chair, unless otherwise determined by the Executive Board shall, in the absence or disability of the Chair, perform the duties and exercise the powers of that office. In addition, they shall perform such other duties and have such other powers as the Executive Board shall prescribe.

Section 6.8. Secretary/Treasurer. The Secretary shall keep the minutes of all meetings of Members and of the Executive Board; he shall have charge of such books and papers as the Executive Board may direct; and he shall, in general, perform all duties incident to the Office of Secretary of a corporation organized under Chapter 55A of the General Statutes of North Carolina. The Secretary/Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial statements. He shall co-sign promissory notes of the Association; he shall prepare a proposed annual budget (to be approved by the Executive Board) and the other reports to be furnished to the Members as required in the Declaration. He shall perform all duties incident to the office of Treasurer of a corporation organized under Chapter 55A of the General Statutes of North Carolina.

Section 6.9. Indemnification. To the extent permitted by the provisions of the North Carolina Nonprofit Corporation Act in effect at the applicable times, each officer is hereby indemnified by the Association with respect to any liability and expense of litigation arising out of his activities as an officer. Such indemnity shall be subject to approval by the Members only when such approval is required by said Act.

ARTICLE VII OPERATION OF THE CONDOMINIUM PROPERTY

Section 7.1. Determination of Common Expenses; Types of Assessments. The Executive Board shall from time to time, and at least annually, prepare and adopt a proposed budget for the Condominium, determine the amount of the Common Expenses payable by the Owners to meet the proposed budget of the Condominium, and allocate and assess such proposed Common Expenses among the Owners in accordance with the procedure set forth in this **Article VII**, but subject to the terms and limitations set forth in the Declaration. The Common Expenses shall include, among other things, the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Executive Board pursuant to the provisions of the Declaration as well as the costs of all common utilities (that are not individually metered with respect to each Unit) and the cost of operating, cleaning, maintaining and repairing the Common Elements and the associated equipment and improvements therein, including, without limitation, the common dumpster and common fire pump and related facilities. The Common Expenses shall also include such amounts as the Executive Board deems necessary for the operation and maintenance of the Common Elements, including without limitation, an amount for working capital of the Condominium; an amount for a general operating reserve; an amount for a reserve fund for losses due to insurance deductibles; an amount for a reserve fund for repair and replacement of the Common Elements and associated improvements and equipment; and such amounts as may be necessary to make up any deficit in the Common Expenses for any prior year. Notwithstanding the foregoing, under no circumstances shall Common Expenses include any amounts for the maintenance, repair, replacement, operation or establishment of reserves with respect to any Unit which is to be maintained, operated, repaired and replaced by the Unit Owner.

Within thirty (30) days after adoption of any proposed budget for the Condominium, the Executive Board shall provide a summary of the budget to all the Owners, and shall set a date for a meeting of the Owners, no less than fourteen (14) nor more than thirty (30) days after mailing of the summary, to provide information on the proposed budget. Notwithstanding any other provision of these Bylaws, the proposed budget shall be deemed ratified unless at that meeting the Owner holding a majority of the Common Elements Interests votes to reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners holding a majority of the Common Elements Interests ratifies a subsequent budget proposed by the Executive Board. Each Owner shall be required to pay an amount ("**Common Assessment**") equal to its share of the Common Expenses based upon such Owner's proportionate share of the Common Elements Interests.

The Association, acting through the Executive Board, also may levy a special assessment ("**Special Assessment**") during any calendar year for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement comprising or to comprise a portion of the Common Elements, including fixtures and personal property; provided, however, that any such Special Assessment must be approved by the approval of the Owner(s) having a majority of the Common Elements Interest, which votes may be cast in person or by proxy at a meeting duly held in accordance with the provisions of these Bylaws. Special Assessments, if approved, shall be payable by each Owner of Units for

which such assessment is applicable in proportion to their respective Common Elements Interest unless otherwise agreed by the mutual approval of the Unit Owners in writing.

In addition to the Common Assessment and the Special Assessment, the Association, acting through the Executive Board may assess individual Unit Owners (“**Individual Unit Assessment**”) for: (i) any costs incurred by the Association for which the Unit Owner has not fulfilled its obligation related to Maintenance, Repair, Replacement, and Reconstruction Activities, if the Association takes actions to do so as authorized herein; and, (ii) any costs incurred by the Association as a result of a Unit Owner’s (or its tenant’s, agent’s, employees, contractor’s, members, or invitee’s) negligence, willful misconduct, or default under its obligations under the Declaration, these Bylaws, or the Rules and Regulations, including any costs for maintenance or repair and reasonable attorney’s fees.

Section 7.2. Payment of Common Expenses. All Owners shall be obligated to pay the assessments assessed by the Executive Board pursuant to the provisions of **Section 7.1** hereof at such time or times as the Board shall determine.

No Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to a sale, transfer or other conveyance by him (made in accordance with the provisions of the Declaration and applicable restrictions of record) of such Unit. A purchaser of a Unit shall be jointly and severally liable with the seller for the payment of Common Expenses assessed against such Unit prior to the acquisition by the purchaser of such Unit without prejudice to the purchaser’s rights to recover from the seller the amounts paid by the purchaser therefor.

Section 7.3. Collection of Assessments. The Executive Board shall take prompt action to collect any Assessments which remain unpaid for more than thirty (30) days from the due date for payment thereof. The Executive Board shall notify any Mortgagee holding a Mortgage on a Unit if any Assessments charged to such Unit remain unpaid for more than thirty (30) days from the due date for payment thereof and in any other case where the Owner of such Unit is in default with respect to the performance of any other obligation hereunder for a period in excess of thirty (30) days.

Section 7.4. Default in Payment of Assessments. In the event of default by any Owner in paying to the Executive Board the Assessments as provided above, such Owner shall be obligated to pay interest on such amount of said Assessments from the due date thereof at the Prime Lending Rate shown in the Money Rates section of the *Wall Street Journal* plus six percent (6%) per annum, together with all expenses, including reasonable attorney’s fees (if permitted by law), incurred by the Association in any proceeding brought to collect such unpaid Assessments. In addition, the Executive Board shall have the authority to levy a late charge on any Assessment, or installment thereof, not paid within fifteen (15) days after its due date, in the amount of four percent (4%) of the overdue Assessment.

The Executive Board shall have the right and duty to attempt to recover any Assessment, or installment thereof, which remains unpaid, together with interest thereon, late payment charges, and the expenses of the proceedings, including reasonable attorneys’ fees (if permitted by law), in an action to recover a money judgment for the same brought against such Owner, or

by foreclosure of the lien on such Unit in like manner as a deed of trust or mortgage of real property.

In the event of the failure of an Owner to pay any Assessment imposed hereunder, or any installment thereof, for more than sixty (60) days after such Assessment shall become due, in addition to the other remedies available under the Condominium Documents and the North Carolina Condominium Act, the Executive Board shall have the right to declare all other Assessments, and installments thereof, with respect to such Owner's Unit that are to fall due during the then current fiscal year of the Association to be immediately due and payable.

Section 7.5. Lien and Personal Obligations. All Assessments provided for in this Article, together with the interest and expenses, including reasonable attorneys' fees (if permitted by law), as provided for herein, shall be a charge on and a continuing lien upon the Unit (and Building therein) against which an Assessment is made, which such lien shall be prior to all other liens excepting only (i) assessments, liens and charges for real estate taxes due and unpaid on the Unit; and (ii) all sums unpaid on Mortgages and other liens and encumbrances duly recorded against the Unit prior to the docketing of such lien. Such lien shall become effective when a notice thereof has been filed in the office of the Clerk of Superior Court for Buncombe County, North Carolina, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of more than thirty (30) days after the same shall become due. Such notice of lien shall also secure all Assessments against the Unit becoming due thereafter until the lien has been satisfied.

The lien for unpaid Assessments shall not be affected by the sale or transfer of the Unit, except in the case of a foreclosure of a Mortgage, in which event the purchaser at foreclosure shall not be liable for any Assessments against such Unit that became due prior to the date of acquisition of title by such purchaser. Such unpaid Assessments shall be deemed Common Expenses collectible from all Owners of Units, including the purchaser at foreclosure. In addition, each Owner shall be personally liable for any Assessment against his/her Unit. No Owner may exempt himself from such liability by non-use or enjoyment of any portion of the Common Elements or by the abandonment or sale of his/her Unit.

Section 7.6. Foreclosure of Liens for Unpaid Common Expenses. In any action brought by the Executive Board to foreclose on a Unit because of unpaid Assessments, the Owner shall be required to pay a reasonable rental for the use of his Unit and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same.

Section 7.7. Violations by Owners. The violation of any rule or regulation adopted by the Executive Board or the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Executive Board the right, in addition to any other rights set forth in the Declaration, these Bylaws or at law or in equity: (a) to enter the Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Executive Board shall not thereby be deemed guilty in any manner of trespass; provided, however, that the Executive Board shall be obligated to institute judicial proceedings before any items of construction can be altered or demolished; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in

equity, the continuance of any such breach at the expense of the defaulting Owner; (c) the right to establish, assess and collect penalties against the defaulting Owner for any such breach, including, but not limited to, the right to immediately assess a penalty of \$100.00 per day against an Owner for each day that such Owner's Unit is in violation of the use restrictions set forth in Section 7.6 of the Declaration; and (d) the right to suspend privileges or services provided by the Association in accordance with the North Carolina Condominium Act.

Section 7.8. Right of Access. Subject to the terms of the Declaration, an Owner shall grant a right of access to his Unit to the Independent Manager and/or any other person authorized by the Executive Board or the Independent Manager for the purpose of making inspection of or for the purpose of correcting any condition originating in a Unit and threatening another Unit or the Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical equipment or other Common Elements in or adjoining a Unit; provided, however, such requests for entry (except in the case of emergencies where no request shall be required) are made in advance and any such entry is at a time reasonably convenient to the Owner. In the case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not.

Section 7.9. Rules and Regulations. Rules and regulations concerning the use of the Units and the Common Elements shall be promulgated and amended by the approval of the Owner(s) having a majority of the Common Elements Interest. Copies of such rules and regulations shall be recorded prior to the time when the same shall become effective.

ARTICLE VIII AMENDMENTS

Subject to the provisions of **Article XIV** of the Declaration, these Bylaws may be amended at any time by an instrument in writing signed and acknowledged by each of the Unit Owners, which instrument shall be effective only upon recordation in the Office of the Register of Deeds of Buncombe County, North Carolina. All persons or entities who own or hereafter acquire any interest in the Condominium Property shall be bound to abide by any amendment to these Bylaws which is duly passed, signed, acknowledged and recorded as provided herein. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights and priorities of any Mortgagee without the consent of such Mortgagee. No amendment to these Bylaws shall be adopted or passed which shall impair or prejudice the rights of a Member (Owner) provided for in the Condominium Documents, without the consent of affected Member (Owner).

ARTICLE IX MISCELLANEOUS

Section 9.1. Severability. Invalidation of any covenant, condition, restriction or other provisions of the Declaration or these Bylaws shall not affect the validity of the remaining portions thereof which shall remain in full force and effect.

Section 9.2. Successors Bound. The rights, privileges, duties and responsibilities set forth in the Condominium Documents, as amended from time to time, shall run with the ownership of the Condominium Property and shall be binding upon all persons who own or hereafter acquire any interest in the Condominium Property.

Section 9.3. Gender, Singular, Plural. Whenever the context so permits, the use of the singular or plural shall be interchangeable in meaning and the use of any gender shall be deemed to include all genders (including entities, as applicable).

Section 9.4. Nonprofit Corporation. No part of the Association's assets or net income shall inure to the benefit of any of the Members, the officers of the Association, or the Directors of the Executive Board, or any other private individual either during its existence or upon dissolution except as reasonable compensation paid or distributions made in carrying out its declared nonprofit purposes as set forth in the Articles of Incorporation of the Association and these Bylaws.