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**DECLARATION OF RESIDENTIAL CONDOMINIUM  
FOR  
7 PATTON AVENUE RESIDENTIAL CONDOMINIUM**

**Date: As of September 25, 2019**

**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 CONDOMINIUM UNITS ARE SUBJECT TO  
RENTAL RESTRICTIONS CONTAINED IN SECTION 7.4 OF THIS  
DOCUMENT.**

**NOTE: AS STATED HEREIN, AND TO THE EXTENT PERMITTED BY  
LAW (INCLUDING, BUT NOT LIMITED TO, SECTION 47C-2-120 OF  
THE NORTH CAROLINA CONDOMINIUM ACT), ALL POWERS OF  
THE RESIDENTIAL CONDOMINIUM ASSOCIATION ARE  
DELEGATED TO THE MASTER CONDOMINIUM ASSOCIATION.**

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**STATE OF NORTH CAROLINA      DECLARATION OF RESIDENTIAL  
COUNTY OF BUNCOMBE          CONDOMINIUM FOR  
7 PATTON AVENUE  
RESIDENTIAL CONDOMINIUM**

This Declaration of Residential Condominium for 7 Patton Avenue Residential Condominium (this "**Declaration**") is made as of the 25<sup>th</sup> day of September, 2019, by **Asheville Arras Residences, LLC, a North Carolina limited liability company** (the "**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.]*

Declarant is the owner as a tenant in common with the Owner of the Commercial Unit (as defined in the Master Condominium, as defined below) of the real property (the "**Real Property**") more particularly described on **Exhibit "A"** attached hereto located in the City of Asheville, Buncombe County, North Carolina:

A. The Real Property is subject to that certain Amended and Restated Declaration of Condominium for 7 Patton Avenue Condominium dated October 26, 2016, recorded in in Book 5483, at Page 1204, Buncombe County Registry, as amended by that certain First Amendment to Amended and Restated Declaration of Condominium for 7 Patton Avenue recorded in in Book 5014, at Page 1237, Buncombe County Registry (collectively, and as further amended from time to time, the "**Master Declaration**"), as further shown on the plans recorded in the Unit Ownership File 1483 and the plat recorded in Plat Book 164, at Page 162, as amended by the final post-construction plans recorded in the Unit Ownership File 1000 and the final post-construction plat recorded in Plat Book 202, at Page 73, (collectively, as amended from time to time, the "**Master Condominium Plans**"), under the name 7 Patton Avenue Condominium (the "**Master Condominium**") in the Office of the Register of Deeds of Buncombe County. The master owners association under the Master Declaration is 7 Patton Avenue Condominium Owners Association, Inc. (the "**Master Association**").

B. Declarant intends to establish a separate Second Tier residential condominium within the "Residential Unit" described in the Master Condominium ("**Residential Condominium Property**") containing fifty-four (54) primary units ("**Residential Condominium Units**"), as shown and described on **Exhibit "C"** attached hereto.

C. Declarant desires to submit the Residential Condominium Property to the terms and provisions of the North Carolina Condominium Act. In addition, Declarant has deemed it desirable to create a nonprofit, incorporated owners' Residential Association that will exercise the votes of the Residential Unit under the Master Declaration, and, subject to the Master Declaration, with the intent of delegating maximum authority to the Master Association,

including the following: maintaining and administering the Common Elements located within the Residential Condominium Property, administering and enforcing the covenants and restrictions created in this Declaration, adopting and amending budgets for revenues, expenditures, and reserves for Common Elements expenses, and levying, collecting and disbursing the Assessments and charges created in this Declaration. In order to accomplish the foregoing, Declarant is entering into this Declaration.

### STATEMENT OF DECLARATION

NOW, THEREFORE, Declarant hereby declares that all of the Residential 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 Residential Condominium Property into Residential 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 Residential 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 Residential 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 Residential Condominium Units prepared by Reese Vanderbilt & Associates and dated June 24, 2019, 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 Residential Condominium 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. Assessments shall include a pass-through of all assessments incurred by the Residential Unit under the Master Declaration.

Section 1.4                    “Building” means and refers to the building comprising the Residential 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 Residential Unit Owner within its respective Residential Condominium Unit, as such terms are used in the North Carolina Condominium Act.

Section 1.5 “Bylaws” means and refers to the Bylaws of the Residential 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 1.6 “Common Elements” means and refers to all portions of the Residential Condominium other than the Residential Condominium Units and the Common Elements under the Master Declaration, as depicted on the Plans, and as more particularly described in **Section 5.1** of this Declaration.

Section 1.7 “Common Elements Interest” means and refers to the undivided percentage interest in the Common Elements allocated to each Residential Condominium 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 Residential Association and voting rights. The Common Elements Interest may be reallocated pursuant to **Section 5.2** or **Section 9.4** if the events described in such provisions occur.

Section 1.8 “Common Expenses” means and refers to any and all expenditures made by or financial liabilities of the Residential 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). Common Expenses shall include any assessments levied by the Master Association against the Units pursuant to the Master Declaration and the bylaws for the Master Association.

Section 1.9 “Declarant” means and refers to 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 1.10 “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 Residential Condominium Units to Residential Unit Owners other than the Declarant; (ii) two (2) years after Declarant 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 Residential Condominium Units was last exercised.

Section 1.11 “Declaration” means and refers to this Declaration of Residential Condominium, as it may be amended in the future. “Executive Board” means and refers to the governing body from time to time of the Residential Association, as constituted in accordance with the Articles of Incorporation of the Residential Association, the Bylaws and the North Carolina Condominium Act.

Section 1.13                    “Limited Common Elements” means those portions of the Common Elements allocated by this Declaration or by the terms of N.C.G.S. §§ 47C-2-102(2) and (4), for the exclusive use and benefit of one or more, but fewer than all, of the Units, to the exclusion of all other Units, as more fully described in Section 5.2 of this Declaration, and as depicted on the Plans.

Section 1.14                    “Master Association” means and refers to 7 Patton Avenue Condominium Owners Association, Inc., its successors and assigns, which is the master owners association under the Master Declaration.

Section 1.15                    “Master Units” means the Condominium Units more particularly designated and described in the Master Declaration and initially consisting of the “Commercial Unit” and the “Residential Unit”, each as more particularly described in the Master Declaration and shown on the Master Condominium Plans.

Section 1.16                    “Member” means any person or entity entitled to membership in the Residential Association as provided herein or in the Bylaws.

Section 1.17                    “Mortgage” means and refers to a mortgage or deed of trust constituting a lien on a Residential Condominium Unit.

Section 1.18                    “Mortgagee” means and refers to the owner and holder of the indebtedness secured by a Mortgage that has notified the Residential Association in writing of its name and address, and that it holds a Mortgage on a Residential Condominium 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 1.19                    “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 1.20                    “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 Residential Condominium 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 Residential Condominium 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 1.21                    “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 Residential Condominium Units and Residential Condominium Property created from the Real Property. The Plans are recorded under the name of the Residential Condominium in the Unit Ownership File 1629-1693, in the Office of the Register of Deeds of Buncombe County.

Section 1.22 "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 Master Units created from the Real Property. The Plat is recorded under the name of the Master Condominium in Plat Book 164, at Page 162, as amended by that certain plat under the name of the Master Condominium in Plat Book 262, at Page 73, in the Office of the Register of Deeds of Buncombe County.

Section 1.23 "Residential Association" means and refers to 7 Patton Avenue Residential 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 1.24 "Residential Condominium" means and refers to the 7 Patton Avenue Residential Condominium, as established by the submission of the Residential Condominium Property to the terms of the North Carolina Condominium Act by this Declaration.

Section 1.25 "Residential Condominium Documents" means and refers to this Declaration, the Articles of Incorporation of the Residential Association, the Bylaws, and, when adopted by the Residential 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 Residential Condominium Property.

Section 1.26 "Residential Condominium Property" means and refers to the Residential Condominium Units and the Common Elements, when constructed, which are subjected to this Declaration.

Section 1.27 "Residential Condominium Unit" or "Residential Condominium Units" means singularly or collectively the separately constituted area or areas described in this Declaration and created out of the Real Property which Residential Condominium Unit or Residential Condominium Units are more particularly described in **Article IV** below.

Section 1.28 "Residential Owner" or "Residential Unit Owner" means and refers to the record owner, whether one or more persons or entities, of fee simple title to any Residential Condominium Unit, but shall exclude those persons or entities having an interest in any Residential Condominium Unit as merely security for the payment or performance of an obligation.

Section 1.29 "Residential Unit" has the meaning ascribed in the Master Declaration and as shown on the Master Condominium Plans.

Section 1.30 "Rules and Regulations" means all rules and regulations adopted by the Residential Unit Owners in accordance with the terms of this Declaration and the Bylaws and all rules and regulations in effect under the Master Declaration

or promulgated by the Master Association in accordance with the Master Declaration or the Master Association's Bylaws.

Section 1.31 "Special Declarant Rights" means the rights reserved for the benefit of Declarant in the Residential Condominium Documents, as more particularly described in Article XX of this Declaration.

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

## ARTICLE III [RESERVED]

## ARTICLE IV DESCRIPTION OF UNITS AND DEVELOPMENT OF UNITS

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

Section 4.2 Residential Condominium Units. There are initially a total of fifty-four (54) Residential Condominium Units within the Residential Condominium, as shown and described on **Exhibit "C"** attached hereto. The identification for each Residential Condominium Unit is set forth on the Plat and Plans. The maximum number of Residential Condominium Units shall be sixty (60).

Section 4.3 Residential Condominium Unit Boundaries. The boundaries of the Residential Condominium Units are as follows:

(a) Upper Boundary: There shall be no upper boundary of the Residential Condominium 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 Residential Condominium 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 Residential Condominium Units will be as shown or described on the Plat and Plans as recorded in the Buncombe County, N.C. Register of Deeds Office.

ARTICLE V  
COMMON ELEMENTS

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

- (a) The Real Property not included within the Master Units.
- (b) All Common Elements under the Master Declaration designated for the use and benefit of the Residential Unit; and
- (c) All tangible personal property, if acquired by the Residential Association, required for the operation and maintenance of any portion the Residential Condominium for which the Residential Association is responsible.

Section 5.2 Limited Common Elements. The Limited Common Elements shall be composed of the following:

- (a) Those portions of any leasing offices, designated mechanical areas, HVAC, electrical, mechanical or other equipment or devices serving exclusively one Residential Condominium Unit even if located within a Common Element (such as a "mechanical room"), any trash chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture lying partially within and partially outside the designated boundaries of a Residential Condominium Unit, but serving exclusively that Residential Condominium Unit, shall be Limited Common Elements allocated exclusively to that Residential Condominium Unit.
- (b) Any shutters, awnings, window boxes, porches, decks, balconies, patios, the mail room, and all exterior doors and windows or other fixtures designed to serve a Residential Condominium Unit, but located outside that Residential Condominium Unit's boundaries, shall be Limited Common Elements allocated exclusively to that Residential Condominium Unit.
- (c) Any portions of the heating, ventilating, and air conditioning systems, including fans, compressors, return air grills and thermostats serving exclusively one Residential Condominium Unit, whether located inside or outside the designated boundaries of a Residential Condominium Unit, shall be Limited Common Elements allocated exclusively to that Residential Condominium Unit.
- (d) Those areas designated as Limited Common Elements on the Plans, including but not limited to, sliding doors.

The cleanliness and orderliness of the Limited Common Elements shall be the responsibility of the Residential Unit Owner having the right to the use and enjoyment of such Limited Common Elements. Notwithstanding any other provisions of this Declaration, or any provision of the Articles, Bylaws or the Act, the obligation for maintenance, repair, or replacement of any portions of the heating, ventilating, and air conditioning systems or any other equipment or device that are Limited Common Elements shall be the sole responsibility of the Residential Unit Owner of the Residential Condominium Unit to which such Limited Common Elements are allocated. References in this Declaration to "Common Elements" shall include Limited Common Elements unless the context clearly indicates otherwise. The allocation of use of Limited Common Elements to the Residential Condominium Units as provided for in this Declaration shall not be altered without the unanimous consent of the Residential Unit Owners whose Residential Condominium Units are affected.

Section 5.3 Undivided Interests of Owners in Common Elements.

The percentage interest in the Common Elements allocated to each Residential Condominium Unit shall be the Common Elements Interest for that Residential Condominium Unit as set forth on Exhibit "C" attached hereto. Except as set forth in this **Section 5.2** and **Section 9.4**, the Common Elements Interest allocated to each Residential Condominium Unit shall not be changed except with the approval of the Residential 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 Interest for each of the Residential Condominium 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 Residential Association 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 Residential Condominium Unit shall be equal to the quotient (expressed as a percentage) of (i) the square footage allocated to such Residential Condominium Unit divided by (ii) the total square footage of all Residential Condominium Units.

Section 5.4 Maintenance of Common Elements.

The Residential Association shall be responsible for the maintenance and repair of all Common Elements, except for the Limited Common Elements, and except for maintenance or repairs caused by the negligence or intentional misconduct of any Residential Unit Owner, his or her agents, or invitees, which shall be the responsibility of that Residential Unit Owner. Notwithstanding the foregoing, the Residential Association shall not be required to carry out any such maintenance obligations to the extent such maintenance obligations are carried out by the Master Association under the Master Declaration.

Section 5.5 Use of the Common Elements.

Except as expressly set forth herein, each Residential Unit Owner and its designated permittees have a non-exclusive right to use the Common Elements (other than the Limited Common Elements not allocated to its Residential Condominium Unit) for the purposes for which they are intended and as permitted by the Residential Condominium Documents, subject to the covenants contained in the Residential

Condominium Documents, and in compliance with the Rules and Regulations of the Residential Association and the Master Association.

Section 5.6                      Use of the Limited Common Elements. Subject to the provisions of Section 5.5 above, each Residential Unit Owner and its designated permittees have the right to use the Limited Common Elements allocated to its Residential Condominium Unit for the purposes for which they are intended and as permitted by the Residential Condominium Documents, subject to the covenants contained in the Residential Condominium Documents, and in compliance with the Rules and Regulations of the Residential Association and the Master Association.

Section 5.7                      Waiver of Use. No Residential Unit Owner may exempt itself from liability for Assessments duly made and levied by the Residential Association or the Master Association, as the case may be, nor release the Residential Condominium Unit owned by it from the liens and charges thereof by waiver of the use and enjoyment of the Common Elements, and if applicable, the Limited Common Elements, and the facilities thereon or by abandonment of its Residential Condominium Unit.

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 Residential Unit Owner, and their respective related parties occupying all or any portion of a Residential Condominium Unit, and their respective guests, invitees, tenants, licensees, heirs, executors, administrators, successors and assigns.

Section 7.1                      Compliance With Laws. All Residential Condominium 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 Residential Condominium 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 Residential Owners, or endanger the health and safety of any Residential Owner.

Section 7.3                      Noise, Odors, and Disorderly Conduct. No Residential Owner shall engage in any disorderly conduct on the Residential 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 Residential Owners. The Residential Owner of a Residential Condominium Unit shall be responsible for the conduct of such

Residential Unit Owner's employees, invitees, guests, tenants and licensees. It shall be the responsibility of an Owner causing or permitting unreasonable sound transmissions to remedy the disturbance. No Residential Owner shall allow strong, unusual or offensive: odors, fumes, dust or vapors to emanate from a Residential Condominium Unit. Notwithstanding anything herein to the contrary, the Owners of the Residential Condominium Units acknowledge 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 Owners of the Residential Condominium Units waive any objection to sounds, activities, and odors typical of such commercial uses.

Section 7.4 Non Compete; Rental Restrictions. Excluding the Residential Condominium Units on the 10<sup>th</sup> floor of the Building, the Residential Condominium Units shall only be used for residential use. Excluding the Residential Condominium Units on the 10<sup>th</sup> floor of the Building, the Residential Condominium Units shall not be used for operating a hotel or similar lodging facility. Subject to applicable laws, regulations and ordinances (including zoning ordinances), no Residential Condominium Unit may be used for rentals for a period of less than ninety (90) days and such Residential Condominium 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 Residential Condominium Unit in advance. Notwithstanding the foregoing, subject to applicable laws, regulations and ordinances (including zoning ordinances), Residential Condominium Units on the 10<sup>th</sup> 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. Notwithstanding anything herein to the contrary, the Owners of the Residential Condominium Units acknowledge that the Residential Condominium Units on the 10<sup>th</sup> floor of the Building may be used for rentals and lodging, including, but not limited to, short term rentals, and the Buyer waives any objection to such uses. As used in this paragraph, the terms "rentals" and "rented" mean use of a Residential Condominium Unit by a party other than a Residential Owner in exchange for any kind of compensation, monetary or non-monetary. Any form of advertising or marketing for rentals of a Residential Condominium Unit for less than ninety (90) days is prohibited, except by the Commercial Unit Owner's designated property management company for Residential Condominium Units on the 10<sup>th</sup> floor of the Building pursuant to the terms, conditions and restrictions of a separate rental management agreement.

Section 7.5 Prohibitions on Use of Common Elements and Other Property. The Common Elements shall not be used for storage of personal property of any kind. In general, no activity shall be carried on nor conditions maintained by any Residential Owner either in such Residential Owner's Residential Condominium Unit or upon the Common Elements which despoils the appearance of the Residential Condominium Property or which interferes with the quiet enjoyment of other Residential Owners with respect to their Residential Condominium Units and the Common Elements.

Section 7.6 Garbage. Trash, garbage and other waste shall be kept in sanitary containers within each Residential Condominium Unit or transported on a routine

basis to the dumpster as shown on the Master Condominium Plans. All Residential Owners shall take all appropriate steps to avoid odors and creating an environment conducive to vermin.

Section 7.7                      Parking. The rights, if any, of Residential Owners to use one of the Buildings within the Commercial Unit for vehicular access or parking shall be contained in the terms of separate parking leases.

Section 7.8                      Leases of Units. Any lease of a Residential Condominium 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 Residential Condominium Documents and that any failure by the lessee to comply with all of the terms of such Residential Condominium Documents shall constitute a default under the lease.

Section 7.9                      Animals. No animals, fish, livestock, or fowl of any kind shall be kept or maintained on the Residential Condominium Property or in any Residential Condominium Unit 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 each Residential Condominium 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 Residential Condominium Units 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 Residential Condominium Property. Pets shall not be permitted to urinate or defecate in the Common Elements or other portions of the Residential Condominium Units absent the written consent of the applicable Residential 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 Residential Unit Owner shall hold the Residential Association harmless from any claim resulting from any action of a pet authorized by this Section to be on the Residential Condominium Property, and shall repair at the pet owner's expense any damage to the Common Elements caused by such pet.

Section 7.10                      Construction Approval. If following the initial construction of the Residential Condominium Units, the Owner of a Residential Condominium Unit desires to exercise the right to construct additions, make other improvements, or undertake activities that would impact the other Residential Condominium Units or the Common Elements, then, in addition to any plan approval that may be required in accordance with **Section 12.4** below, the design plans for such must be submitted to the Master Association in order to obtain the consent of the Executive Board of the Master Association.

If approval is required pursuant to this **Section 7.10**, then any request for approval shall be made in writing in accordance with the terms of **Section 12.4(b)** below.

Section 7.11 Signs. No signs are permitted within the doors or windows of any Residential Condominium Unit if visible from outside of such Residential Condominium Unit.

Section 7.12 Exterior Railings, Knee Walls, Balconies and Terraces. Any exterior railing, knee walls, balconies and terraces constructed on the Residential Condominium Property within the boundaries of a Residential Condominium 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. No open fires shall be permitted on any part of the Residential Condominium Property.

Section 7.13 Flags. No flags are permitted to be displayed within a Residential Condominium Unit if visible from outside of such Residential Condominium Unit.

Section 7.14 Sale of Units. The right of a Residential Unit Owner to sell, transfer or otherwise convey that Residential Owner's Unit is not subject to any right of first refusal or similar restriction under this Declaration. To enable the Residential Association to maintain accurate records of the names and addresses of the Residential Unit Owners, each Residential Unit Owner agrees to notify the Residential Association, in writing, within five (5) days after interest in that Residential Unit Owner's Unit has been transferred to another person or entity. In addition, each Residential Unit Owner agrees to provide to a purchaser of that Residential Owner's Unit a copy of the Residential Condominium Documents and all effective Rules and Regulations.

Section 7.15 Standard of Maintenance. Pursuant to **Section 12.1** each Residential Owner shall keep such Residential Unit Owner's respective Residential Condominium Unit in a clean, neat and orderly condition and in a good state of maintenance and repair.

Section 7.16 Insurance. Nothing shall be done or kept in any Residential Condominium Unit or in the Common Elements which will increase the rate of insurance of any other Unit within this Declaration or the Master Declaration. No Residential Unit Owner shall permit anything to be done or kept in its Residential Condominium Unit or in the Common Elements which will result in the cancellation of insurance on any other Unit within this Declaration or the Master Declaration.

Section 7.17 Compliance with Covenants, Conditions and Restrictions. Every Residential 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 Residential Condominium Property. A violation committed by any persons residing in, occupying or visiting a Residential Condominium Unit at the behest or with the implied or express permission of the associated Residential Unit Owner or any other occupant of the associated Residential Condominium Unit, or committed by any agent, employee, business invitee, or contractor of the associated Residential Unit Owner or of any person occupying a

Residential Condominium Unit, shall be attributed to such Residential Condominium Unit and the Residential Owner thereof.

Section 7.18 Rules and Regulations. In addition to the use restrictions set forth in this Declaration, reasonable rules and regulations governing the use of the Residential Condominium Property may be established and amended from time to time by the Master Association.

Section 7.19 Satellite Dishes and Antennas. Unless otherwise required by law, no exterior satellite dish or antenna may be placed on the exterior of any Residential Condominium Unit.

Any action brought by the Residential 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 RESIDENTIAL ASSOCIATION

Section 8.1 Organization of Residential Association. A nonprofit North Carolina corporation known and designated as 7 Patton Avenue Residential Condominium Owners Association, Inc. (the "**Residential Association**") has been organized to provide for the administration of the Residential Condominium Property; however, the Residential Association hereby delegates, to the extent permitted by law, all of its duties to the Master Association, including, but not limited to, maintaining and administering the Common Elements located within the Residential Condominium Property, administering and enforcing the covenants and restrictions created in this Declaration, adopting and amending budgets for revenues, expenditures, and reserves for Common Elements expenses, and levying, collecting and disbursing the Assessments and charges created in this Declaration. In order to accomplish the foregoing, Declarant is entering into this Declaration. A true copy of the Bylaws of the Residential Association is attached hereto as **Exhibit "D"**. Every Residential Owner shall be required to be and shall automatically be a Member of the Residential Association by virtue of ownership in a Residential Condominium Unit. In the event that a Residential Owner fails to perform the obligations required of this Declaration, then the Residential Association shall have the right to assume control of and assume the Residential 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 Residential Condominium Property, the Residential Association, hereby grants 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 Residential Condominium Units, Common Elements, and otherwise administer and manage the Residential Condominium in accordance with this Declaration and the Bylaws to the Master Association. Any sum assessed by the Residential Association remaining unpaid for a period of thirty (30) days or longer shall constitute a lien on the Residential Condominium 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

Residential Association (by and through the Master 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 Residential Condominium 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 Residential Association shall have an Executive Board of three (3) Directors who need not be members of the Residential Association and who shall be initially appointed by the Declarant. Following the expiration of the Declarant Control Period, the Residential Association shall appoint the Executive Board. Two (2) of the Directors shall also serve on the Executive Board of the Master Association, as determined by the Declarant during the Declarant Control Period and thereafter by the Executive Board of the Residential Association.

**Section 8.4**                      Books and Records.      The Residential Association shall maintain current copies of: (a) the Residential Condominium Documents, as they may be amended from time to time, (b) any Rules and Regulations; and (c) all financial records of the Residential 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 Residential Owner, any Mortgagee, any Residential Condominium Unit prospective purchaser and any insurer or guarantor of a loan secured by a Mortgage. Any Residential Owner, and at the expense of said Residential 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**                      Partitioning.      The interests in the Common Elements allocated to each Residential Condominium Unit shall not be conveyed, devised, encumbered, partitioned or otherwise dealt with separately from said Residential Condominium Unit, and the interests in the Common Elements allocated to each Residential Condominium Unit shall be deemed conveyed, devised, encumbered or otherwise included with the Residential Condominium Unit even though such interests are not expressly mentioned or described in the instrument conveying, devising, encumbering or otherwise dealing with such Residential Condominium Unit. Any conveyance, mortgage or other instrument which purports to grant any right, interest or lien in, to or upon the Residential Condominium Unit, shall be null, void and of no effect insofar as the same purports to affect any interest in a Residential Condominium Unit's allocated interests in the Common Elements unless the same purports to convey, devise, encumber or otherwise deal with the entire Residential Condominium Unit. Any instrument conveying, devising, encumbering or otherwise dealing with any Residential Condominium Unit shall be deemed and construed to affect the entire Residential Condominium Unit and its allocated interest in the Common Elements. Nothing herein contained shall be construed as limiting or preventing ownership of any Residential Condominium 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 9.2 Conveyance or Encumbrance of Common Elements.

While the Residential 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 Residential 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 Residential Unit Owner's allocated interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of such Residential Unit Owner's Unit.

Section 9.3 Nature of Interest in Unit. Every Residential

Condominium Unit, together with its allocated interest in the Common Elements, 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 Residential Condominium Unit shall be entitled to the exclusive fee simple ownership and possession of such Unit Owner's Residential Condominium Unit subject only to the covenants, conditions, restrictions, easements, uses, limitations, obligations, and Rules and Regulations set forth in the Residential Condominium Documents, or adopted pursuant to the terms of this Declaration.

Section 9.4 Master Declaration Easements. Every Residential

Condominium Unit and each Residential Owner thereof shall be benefited and/or burdened by all easements over the Master Condominium's Common Elements as are reserved and/or granted in the Master Declaration.

ARTICLE X  
ASSESSMENTS

Section 10.1 Taxes. Every Residential Condominium Unit, together

with 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 Residential Owner shall be liable solely for the amount taxed against such Residential Unit Owner's individual Residential Condominium Unit, provided, however, real property ad valorem property taxes will not be separately assessed against the Residential Condominium Units until the first full calendar year following recordation of the Declaration. The Residential Owners among themselves have agreed that the real property ad valorem taxes applicable to the Residential 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 Residential Owners on the basis of each Residential Owners' Common Elements Interest.

Section 10.2 Common Expenses. Except as otherwise provided in

this Declaration or in the Bylaws, each Residential Owner shall contribute as its share of the Common Expenses, all in accordance with the definition of "**Common Expenses**" set forth

above, the Bylaws, the Master Declaration and the provisions of the North Carolina Condominium Act, an amount equal to the Common Expenses multiplied by the respective Residential Owner's share of Common Elements Interest. Common Assessments for all Residential Condominium Units may begin as of the date of the first conveyance of a Residential Condominium Unit to an Owner or at anytime thereafter as determined by the Residential Owners provided in all events that the Residential Owners shall be solely responsible for the Common Expenses in accordance with the terms of the Residential Condominium Documents and the North Carolina Condominium Act. The due dates for payment of such Common Expenses shall be established by the Executive Board of the Master Association 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 Residential Unit Owners as more particularly described therein.

## ARTICLE XI INSURANCE

Section 11.1                      Property Insurance. Each Residential Unit Owner shall obtain and maintain at all times a policy of property insurance on its Residential Condominium Unit and appurtenant improvements which a Residential Owner constructs within its Residential Condominium Unit, each Residential 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 its Residential Condominium Unit, and the contents, betterments and appurtenant improvements of same 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 Residential 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 Residential Owner, and any Residential 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 Residential Association and all insureds, including all mortgagees named in the mortgage clause; that no act or omission by any Residential 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 Residential Owner of another Residential Condominium Unit covering the same risk covered by the policy, each Residential Unit Owner's policy on its Building provides primary

insurance. Each property insurance policy shall provide for the issuance of certificates or mortgage endorsements to each Mortgagee and to the other Residential Unit Owners.

With regard to the Common Elements, the Residential Association shall carry the insurance required of Residential Unit Owners utilizing the same requirements as required for Residential Unit Owners and any Building and appurtenant improvements constructed within a Residential Condominium 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 Residential Unit Owners 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 Residential 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. The Executive Board shall review such limits annually.

**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 \$100,000.00. 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 7.16**, 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 Residential Unit Owner agrees that if any portion of the Residential Condominium Property which is covered under the Residential Association's insurance policy is damaged or destroyed by a Residential Owner, or their respective family, invitees, guests, employees, contractors or tenants, then such Residential Owner shall be responsible for paying the lesser of: (a) the insurance deductible due under the Residential 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 Residential Unit Owner(s) or twenty (20) days after mailing of such notice to the responsible Residential Owner(s) by certified mail, whichever occurs first. In the event, a Residential 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 Residential 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 and their Mortgagees in the following shares:

(a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Residential Owner and its Mortgagee, if any, each Residential Owner's share to be the same as such Residential 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 Residential 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 Residential Condominium or to raze the remaining damaged appurtenant improvements; and

(2) the remainder of the proceeds shall be distributed to all Residential Owners or Mortgagees, as their interests may appear, in proportion to their respective Common Elements Interest.

(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 Residential Owners and their Mortgagees, if any, jointly, in proportion to their respective Common Elements Interest.

**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 Master Association's Executive Board shall arrange for the prompt restoration and replacement of the damaged or destroyed Common Element pursuant to the Master Declaration unless (1) the Master Condominium is terminated in accordance with the provisions of **Article XV** of the Master Declaration, or (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the Master Unit Owners by an 80% vote, decide not to rebuild and 100% of the Owners assigned to Limited Common Elements not to be rebuilt vote not to rebuild. Unless one of the preceding three conditions occurs, the Master Association's 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 in accordance with the provisions of this Declaration. 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 Master Plans and the Plans.

**Section 12.2**                      **Maintenance of Units.** Each Residential Unit Owner shall be responsible for the maintenance and repair of its Residential Condominium Unit and, pursuant to Section 5.2, the Limited Common Elements serving its Residential Condominium Unit in a manner consistent with a first class residential luxury condominium. In order to avoid risks and hazards that will result from lack of routine and concerted maintenance activities, it is the obligation of each Residential Unit Owner to cause its Residential Condominium Unit to be maintained in a safe and sanitary condition.

**Section 12.3**                      **Repair and Reconstruction of Residential Condominium Units.** In the event of damage to or destruction of any improvements as constructed within boundaries of a Residential Condominium Unit, including, but not limited to, any damage which renders another Residential Condominium Unit unusable or structurally unsound, the Residential Unit Owner of such Residential Condominium Unit shall promptly notify the Residential Association and the Master Association and shall arrange for the prompt restoration and replacement of such Residential Owner's damaged or destroyed improvements, unless (1) the Master Condominium is terminated in accordance with the provisions of **Article XV** of the Master Declaration, or (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the Master Unit Owners by an 80% vote decide not to rebuild, and 100% of the Owners of Residential Condominium Units not to be rebuilt vote not to rebuild. Unless one of the preceding three conditions occurs, the applicable Residential

Unit Owner shall arrange for the prompt repair and restoration of such Residential Unit Owner's damaged or destroyed improvements.

Section 12.4 Performance of Maintenance, Upkeep and Repair.

(a) Each Residential Unit Owner shall be entitled to make alterations and undertake maintenance, upkeep or repair activities for its Residential Condominium Unit (collectively "**Maintenance, Upkeep and Repair Activities**") without the consent of any other Residential Unit Owner provided that such Maintenance, Upkeep and Repair Activities do not: (i) affect the external appearance of any other Residential Condominium 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); (ii) directly or indirectly interfere with mechanical systems serving the Common Elements or the Residential Condominium Units, as well as the use and quiet enjoyment of the other Residential Condominium Units; (iii) cause the other Residential Unit Owners to incur additional costs, increase the cost of maintenance of the other Residential Condominium Units or the Common Expenses of the Residential Condominium; (iv) result in additional restrictions being imposed upon the other Residential Condominium Units as a result of building codes or otherwise; or (v) require access to or alteration of any portion of the other Residential Condominium Units or Common Elements or impose additional loads on the structure or mechanical systems of other Residential Condominium Units or Common Elements, or (vi) interfere with the continued operation and use of the other Residential Condominium Units (i.e. as a result of material construction noise, vibration, temporary interruption of utilities, interference resulting from the staging of construction, etc.).

(b) Should a Residential Unit Owner desire to make alterations and/or conduct Maintenance, Upkeep and Repair Activities, to or benefitting the Residential Owner's Unit which impacts the Residential Condominium Property as set forth in **Section 12.4 (a)(i)-(vi)** above, then such Residential Unit Owner shall be required to obtain the prior written approval of the Master Association. 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 Master Association by a structural engineer which confirms, among other things, that the proposed modifications shall not jeopardize the structure or use of the other Units, or any portion of the Residential Condominium. The reviewing Master Association 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. 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 any Residential Unit Owner. If any Residential Unit Owner breaches its obligation to maintain its Unit in a good and workmanlike condition and in accordance with **Section 12.2** of this Declaration, or otherwise fails to undertake Maintenance, Upkeep and Repair Activities in accordance with the terms of the Residential Condominium Documents, then, in addition to all

other rights and remedies at law or in equity, the Master Association may send written notice to such breaching Residential Unit Owner and, if such obligations are not performed by the breaching Residential Unit 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 Master Association shall have the right (without limiting any other rights that may be available) to perform such obligations and bill the breaching Residential Unit Owner for the costs of such performance. If the breaching Residential Unit 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, 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 Master Association 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 RESIDENTIAL CONDOMINIUM DOCUMENTS

All present and future Residential Unit Owners, tenants, and occupants of the Residential Condominium Units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws, the Master Declaration, the Master Association's 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 Residential Condominium Unit (or portion thereof) shall constitute an agreement that the provisions of this Declaration, the Bylaws, the Master Declaration, the Master Association's 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 Residential 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 Residential Unit Owner(s) to which sixty-seven percent (67%) of the votes in the Residential 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 Residential 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).

ARTICLE XV  
TERMINATION

The Residential Condominium may be terminated and the Residential Condominium Property removed from the provisions of the North Carolina Condominium Act only by the vote the Residential Unit Owners and their Mortgagees, as applicable, 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 Residential Unit 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 Residential Unit Owners and Mortgagees on the Residential Condominium Units in the Residential Condominium Property shall be as provided in N.C.G.S. §47C-2-118.

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

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 Residential Condominium Documents, but in the event of any conflict between the provisions of the Residential Condominium Documents and the provisions of this **Article XVI**, the provisions of this **Article XVI** shall control.

Section 16.2 Percentage of Mortgagees. Wherever in the Residential Condominium Documents the approval or consent of a specified percentage of Mortgagees is required, it shall mean the approval or consent of Mortgagees holding Mortgages on Residential Condominium Units which have allocated to them that specified percentage of votes in the Residential Association, as compared to the total votes in the Residential Association allocated to all Residential Condominium Units then subject to Mortgages held by Mortgagees.

**Section 16.3** 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 Residential Association, including copies of the Residential Condominium Documents, as amended, and the financial statements of the Residential Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Residential 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 16.4** Mortgagee's Rights to Notice. Any Mortgagee

(including, for purposes of this **Section 16.4**, any insurer or guarantor of a loan secured by a Mortgage that has notified the Executive Board in writing of its name and address, the address and unit designation of the Residential Condominium Unit encumbered by the Mortgage, and that it holds, insures or guarantees a Mortgage on the specified unit shall have the right to receive from the Residential Association prompt written notice of the following:

(a) Default under any of the terms and provisions of the Residential Condominium Documents by any owner owning a Residential Condominium 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 Residential Condominium 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 Residential Association.

(d) Any proposed action by the Residential Association, the Executive Board, or the Residential Owners, which under the terms of the Residential 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 Residential 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 16.5** Other Mortgagee Rights. Notwithstanding any other

provision of this Declaration or the Bylaws, the Residential Association may not change the period for collection of regularly budgeted Common Expenses to less frequently than quarterly without the consent of all Mortgagees that have served written notice to the Residential Association as provided in **Section 16.4** above. Any representative of a Mortgagee may attend and address any meeting that an Owner may attend.

**Section 16.6** Consent and Notice Required. Notwithstanding any other provision of this Declaration or the Residential Condominium Documents, no amendment of any material provision of the Residential Condominium Documents described in this **Section 16.6** shall be effective without notice to all Mortgagees impacted by such amendment, as required by **Section 16.4** and the approval of the Residential 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 Residential 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 Residential Condominium Units, the Limited Common Elements and/or the Common Elements.

(e) Reallocation of interests in the Common Elements or the Limited Common Elements, except when the Limited Common Elements or Common Elements are reallocated by agreement between Owners of Residential Condominium Units in accordance with **Section 9.4**, then only those Residential Unit Owners and only the Mortgagees holding Mortgages on those Residential Condominium 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 Residential Condominium Units and the Mortgagees holding Mortgages on those Residential Condominium Units must approve such action.

(g) Convertibility of Residential Condominium 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 Residential Condominium.

(i) The requirements for insurance and fidelity bonds.

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

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

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

- (m) Any termination of the Residential 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 16.7 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 Residential 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 Residential Owner's improvements are taken in condemnation or by eminent domain, the award for such taking shall be distributed first to the Mortgagee of such Residential Condominium Unit, if a Mortgagee exists for such Residential Condominium Unit, then to the Owner of the Residential Condominium 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 Residential Condominium Unit, the Owner of the Residential Condominium Unit so impacted shall arrange for the prompt restoration and replacement of the damaged or destroyed improvements unless (1) the Master Condominium is terminated in accordance with the provisions of **Article XV** of the Master Declaration, or (2) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) the Master Unit Owners having a majority of the Common Elements Interest decide 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 Residential 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 Residential Unit Owner upon acquisition of its Residential Condominium Unit shall be responsible for providing written notice to the Residential Association or any manager hired by the Residential Association, which notice shall specify the name of the Residential Owner and such Residential Owner's Unit address and phone number (which may or may not be the address and phone number of the Residential Condominium Unit). The Residential Association and the manager shall be entitled to rely upon such notices for the purpose of all correspondence or notices to such Residential Owner until such Residential Owner provides the Residential 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.

(a) It is the clear intent of the Residential Owners, the Executive Board, and the Residential Association to arbitrate all disputes without litigation. The Residential Owners, the Executive Board and the Residential 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 a Residential Owner in connection with the design and construction of a Building within the boundaries of a Residential Condominium 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 Residential 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 Residential Condominium Documents;

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

(iii) the design, construction, or quality of a Building and appurtenant improvements within or comprising any portion of a Residential Condominium 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 Residential 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 Residential Association to collect Common Expenses, Assessments or other amounts due from any Residential Owner, including, but not limited to any penalties owed by Residential Owner for violation of this Declaration or the Rules and Regulations;

(2) any suit by the Residential 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 Residential 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 Residential Owners, which does not include Declarant or the Residential Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Residential 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 Residential 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 Residential 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 Residential Owners holding a majority of the votes in the Residential Association approve (in writing) the Residential 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 Residential Condominium 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 Residential 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 a sales and/or leasing office, model units and signs advertising the Residential Condominium Units.

(c) The right to use easement areas throughout the Common Elements for the purpose of completing construction of the Building and the other Master Residential Condominium Units pursuant to the Master Declaration and the Master Condominium Plans.

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

(e) The right to appoint or remove officers of the Residential 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.

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(g) The right to exercise any other rights granted to or reserved by Declarant in the Residential 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 Residential Condominium Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, without limitation, the Federal National Mortgage Residential 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 Residential Condominium Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect any Residential Condominium 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 Residential 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 Residential Condominium Property.

(j) The right to exercise all rights reserved to the Declarant under the Master Declaration.

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]

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IN WITNESS WHEREOF, the 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., its Manager

By: James M. Coyle  
Name: James M. Coyle  
Title: Secretary

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: James M. Coyle, Secretary of McKibbon Hotel Group, Inc., Manager of Asheville Arras Residences, LLC.

Date: September 23, 2019

Joy Powell  
(official signature of Notary)  
Joy Powell, Notary Public  
(Notary's printed or typed name)

(Official Seal)


My commission expires: APRIL 16, 2023  


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.

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EXHIBIT B  
TO  
DECLARATION OF CONDOMINIUM  
LEGAL DESCRIPTIONS OF UNITS

The Residential Condominium Units comprising the Residential Condominium are designated by number as set forth on the Plans. The Residential Condominium Units are fully described and accurately depicted on the Plans of each Unit as recorded in Unit Ownership File 1483, as amended by the plans recorded in the Unit Ownership File 1629 of the Buncombe County, N.C. Register's Office, referenced to said Plans being made for a more particular description of the Residential Condominium Units.

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**EXHIBIT C**  
**TO**  
**DECLARATION OF CONDOMINIUM**

<b>Residential Condominium Unit Number</b>	<b>Floor</b>	<b>Unit Type</b>	<b>Square Footage</b>	<b>% Interest per Unit</b>
1001	10	A2	737	0.94%
1002	10	A1	955	1.22%
1003	10	A4	853	1.09%
1004	10	A5	1,028	1.31%
1005	10	A6	823	1.05%
1006	10	A6A	823	1.05%
1007	10	A5A	1,028	1.31%
1008	10	A4A	868	1.11%
1009	10	A1A	955	1.22%
1010	10	A2A	737	0.94%
1101	11	B1	1,606	2.05%
1102	11	A9A	1,142	1.46%
1103	11	A10A	1,136	1.45%
1104	11	A10	1,136	1.45%
1105	11	A9	1,150	1.47%
1106	11	B2	1,467	1.87%
1107	11	A8	1,314	1.68%
1201	12	B1	1,606	2.05%
1202	12	A9A	1,142	1.46%
1203	12	A10A	1,136	1.45%
1204	12	A10	1,136	1.45%
1205	12	A9	1,150	1.47%
1206	12	B2	1,467	1.87%
1207	12	A8	1,314	1.68%
1401	14	B1	1,606	2.05%
1402	14	A9A	1,142	1.46%
1403	14	A10A	1,136	1.45%
1404	14	A10	1,136	1.45%
1405	14	A9	1,150	1.47%
1406	14	B2	1,467	1.87%
1407	14	A8	1,314	1.68%
1501	15	B3 DEN	2,328	2.97%

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1502	15	B6	1,523	1.95%
1503	15	A11	1,404	1.79%
1504	15	B5	1,716	2.19%
1505	15	B4	2,104	2.69%
1601	16	B3 DEN	2,328	2.97%
1602	16	B6	1,523	1.95%
1603	16	A11	1,404	1.79%
1604	16	B5	1,716	2.19%
1605	16	B4	2,104	2.69%
1701	17	B3 DEN	2,328	2.97%
1702	17	B6	1,523	1.95%
1703	17	A11	1,404	1.79%
1704	17	B5	1,716	2.19%
1705	17	B4	2,104	2.69%
1801	18	P8	1,100	1.41%
1802	18	P7	3,256	4.16%
1803	18	P6	1,741	2.22%
1804	18	P5	2,323	2.97%
1805	18	P4	1,240	1.58%
1806	18	P3	2,267	2.90%
1807	18	P2	1,514	1.93%
1808	18	P1	1,934	2.47%
<b>TOTAL</b>			<b>76,854</b>	<b>100.00%</b>

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**EXHIBIT D****BYLAWS OF****7 PATTON AVENUE RESIDENTIAL 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 Residential 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 Residential Condominium Documents, the Residential Association shall be responsible for administering, operating, maintaining, and managing the Common Elements.

**Section 2.2. Official Action.** Unless specifically required in the Residential Condominium Documents, all actions taken or to be taken by the Residential 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 Residential Condominium Documents or these Bylaws. The Residential 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 Residential 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 Residential Association shall be located at 327 Hillsborough Street, Raleigh, NC 27603.

**Section 3.2. Other Offices.** The Residential 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 Residential Association may require.

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

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

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## ARTICLE IV MEMBERSHIP

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

Membership in the Residential 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 Residential Condominium 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 Residential 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 Residential 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 Residential Unit Owners having not less than twenty percent (20%) of the votes in the Residential 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 Residential 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.

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**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 a Residential Unit Owner at the last address on file with the Residential Association.

Notice given to any one tenant in common, tenant by entirety or other joint Owner of a Residential Condominium Unit shall be deemed notice to all joint Owners of the subject Residential Condominium 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 Residential Unit Owners may be waived by any Residential Unit Owner, before or after the meeting, by a writing filed with the records of the Residential Association. The attendance of any Residential 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 such Residential 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 Residential Unit Owners where Residential Unit Owners who hold more than fifty percent (50%) of the total voting power in the Residential 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 Residential Association, each Member may vote in person or by proxy. The person designated a proxy need not be a Residential 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 Residential Condominium 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.

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**Section 4.9. Voting.** Each Member's vote shall equal its Common Elements Interest in the Residential Condominium; provided that if a Residential Condominium Unit shall be owned by more than one (1) Residential Unit Owner, such Residential 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 of 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 Residential 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 Residential 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 Residential 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 Residential Association to amend the Declaration, to terminate the Residential 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 three (3) Directors of the Executive Board. Directors shall serve without compensation. Two (2) of the Directors shall also serve on the Executive Board of the Master Association pursuant to the Master Declaration, which two (2) Directors shall be determined by the Executive Board of the Residential Association.

**Section 5.3. Election of Directors.** Subject to the Declarant's appointment and removal rights, as set forth in **Section 20.1(e)** of the Declaration, nomination for Directors shall be made from the floor at the annual meeting. Election shall be by secret written ballot and by a majority of the votes entitled to be voted at such meeting in which a quorum is present. Cumulative voting is not permitted. At the first annual meeting following the expiration of the Declarant Control Period, three (3) Directors shall be elected to serve until the following annual meeting. Each Director shall serve for a term of one (1) year or until his or her death, resignation, retirement, removal, disqualification or until his or her successor is elected and qualified. Directors may

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succeed themselves in office. With the exception of the Directors appointed by the Declarant, each Director must own a Residential Condominium Unit. In the event that any such Director ceases to be in compliance with the preceding sentence, such Director's term shall be automatically terminated and the vacancy created thereby shall be filled in accordance with **Section 5.5** hereof.

**Section 5.4. Removal.** Any Director, except those appointed by the Declarant or which may be removed by the Declarant under **Section 20.1(e)** of the Declaration, may be removed by at least sixty-seven percent (67%) vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present, with or without cause, in accordance with N.C.G.S. §47C-3-103(b). In the event of death, resignation or removal of a director, his successor shall be selected by the Declarant under **Section 20.1(e)** of the Declaration and thereafter by a majority vote of those votes entitled to be voted at a meeting where a quorum is present.

**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 remaining members of the Executive Board until the next election.

**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 Residential 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 Residential 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 Residential Association for compensation based upon quantum meruit.

**Section 5.8. Loans to Directors and Officers.** No loans shall be made by the Residential 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 Residential 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

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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 Residential 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 Residential Association; (2) deposit of same at the Residential Condominium 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 Residential 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**. Subject to the delegation of powers to the Master Association contained in the Declaration, the Executive Board shall have the authority to exercise all powers and duties of the Residential Association necessary for the administration of

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the affairs of the Residential Condominium except such powers and duties as by law or by the Residential Condominium Documents may not be delegated by the Owners to the Executive Board. The powers and duties to be exercised, and delegated, as applicable, 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 Residential Condominium and collection of the Common Expenses from the Owners, as provided in the Residential 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 Residential 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 Residential Condominium Units and Common Elements;

E. Opening of bank accounts on behalf of the Residential 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 Residential Association; obtaining annual audits of the financial records of the Residential Association from the Residential 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 Residential Association and insuring that their duties are properly performed;

J. Enforcing, on behalf of the Residential 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;

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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 Residential 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 Residential Condominium, other than the Residential Condominium 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 Residential Condominium 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 Residential Condominium 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 Residential Condominium 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 Residential Condominium 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;

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

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T. Appointing the Residential Association designees to the Executive Board of the Master Association.

**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 Residential Association concerning the routine management of the Residential 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 Residential 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 Residential 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 Residential 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 Residential 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 Residential Association shall consist of a Director designated as Chair, a Director designated as Vice Chair, and a Director designated as Secretary/Treasurer. The Directors designated as Chair and Vice Chair shall also serve as Directors on the Executive Board of the Master Association pursuant to the Master Declaration.

**Section 6.2. Designation and Term.** The officers of the Residential 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.

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**Section 6.5. Multiple Offices.** No Executive Committee Member may hold more than one office, except as specifically provided in Section 6.1 regarding the Master Association.

**Section 6.6. Chair.** The Chair shall be the chief executive officer of the Residential 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 Residential 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 Residential 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 Residential 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 Residential 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 RESIDENTIAL 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 Residential Condominium, determine the amount of the Common Expenses payable by the Owners to meet the proposed budget of the Residential 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 Residential 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 Residential Condominium Unit which is to be maintained, operated, repaired and replaced by the Residential Unit Owner.

Within thirty (30) days after adoption of any proposed budget for the Residential Condominium, the Executive Board of the Master Association 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 once approved by the Executive Board of the Master Association in accordance with the Master Declaration. 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 Interest.

The Residential 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 Residential Unit Owners in writing.

In addition to the Common Assessment and the Special Assessment, the Residential Association, acting through the Executive Board may assess individual Residential Unit Owners ("**Individual Unit Assessment**") for: (i) any costs incurred by the Residential Association for which the Residential Owner has not fulfilled its obligation related to Maintenance, Upkeep and Repair Activities, if the Residential Association takes actions to do so as authorized herein; and, (ii) any costs incurred by the Residential Association as a result of a Residential 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.

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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 Residential Condominium 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 Residential Condominium 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 Residential 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 Residential 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 Residential 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 Residential Condominium Unit 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 Residential Condominium Unit; and (ii) all sums unpaid on Mortgages and other liens and

encumbrances duly recorded against the Residential Condominium 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 Residential Condominium 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 Residential Condominium 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 Residential Condominium 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 Residential Condominium 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 7.4 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 Residential Condominium 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

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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 Residential Condominium 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.** In addition to the use restrictions set forth in the Declaration, reasonable rules and regulations governing the use of the Residential Condominium Property may be established and amended from time to time by the Master Association.

#### **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 Residential 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 Residential 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 Residential 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 Residential Condominium Documents, as amended from time to time, shall run with the ownership of the Residential Condominium Property and shall be binding upon all persons who own or hereafter acquire any interest in the Residential 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 Residential Association's assets or net income shall inure to the benefit of any of the Members, the officers of the Residential 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 Residential Association and these Bylaws.

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