

# Shops Bylaws

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## EXHIBIT B BYLAWS OF SHOPS AT THE COLONY OWNERS ASSOCIATION, INC

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## ARTICLE I: PLAN OF CONDOMINIUM

### 1.1 Unit Ownership

The property located in Mecklenburg County, State of North Carolina, and more particularly described in the Declaration of Shops At The Colony Condominiums (the "Declaration"), has been submitted to the provisions of the North Carolina Condominium Act (the "Act") by instrument recorded in the Office of the Register of Deeds for Mecklenburg County, North Carolina, simultaneously herewith, and shall be known as The Colony Lofts Condominiums (the "Condominium").

### 1.2 Applicability of Bylaws

The provisions of these Bylaws are applicable to the Property of the Condominium, and to the use and occupancy thereof including all additional phases which may be added thereto.

### 1.3 Persons Bound

All present and future Owners, mortgagees, Lessees and Occupants of Units and their employees, and any other persons who may use the facilities of the Property in any manner are subject to the Declaration, these Bylaws and any Rules and Regulations made pursuant hereto, and any amendment to these Bylaws or the Declaration upon the same being passed and recorded in the manner set forth in the Condominium Documents. The acceptance of a deed of conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that these Bylaws (and any Rules and Regulations made pursuant hereto) and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified and will be complied with.

### 1.4 Definitions

The words, phrases, and terms listed in these Bylaws shall have the meanings as set forth in the Declaration, to which these Bylaws are attached, unless the context clearly indicates a different meaning therefor.

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## **ARTICLE II: UNIT OWNERS**

### **2.1 Name and Nature of Association**

Shops At The Colony Owners Association, Inc. (the "Association") shall be a nonprofit corporation, organized under the laws of the State of North Carolina, and the membership shall be comprised of all of the Unit Owners as herein provided, which Association shall be governed by the Board as herein provided.

### **2.2 Place of Meetings**

All meetings of the Association shall be held at the Property, or at such other place, either within or without the State of North Carolina, as shall be designated in a notice of the meeting.

### **2.3 Annual Meeting**

An annual meeting of the Unit Owners shall be held at 7:00 o'clock p.m. on the first Monday in May of each year, if not a legal holiday, and if a legal holiday, then at the same time on the next business day following the legal holiday, for the purpose of electing members of the Board and for the transaction of such other business as may be properly brought before the meeting.

### **2.4 Substitute Annual Meetings**

If the annual meeting shall not be held on the day designated by the Bylaws, a substitute annual meeting may be called in accordance with the provisions of Section 2.5 of this Article. A meeting so called shall be designated and treated for all purposes as the annual meeting.

### **2.5 Special Meetings**

Special meetings of the Unit Owners may be called at any time by the President, a majority of the Board, or upon the written request of the Unit Owners owning at least 20% in Allocated Interest in the Common Elements exclusive of those Units held by the Declarant.

### **2.6 Notice of Meetings**

Written or printed notice stating the place, day, and hour of any meeting shall be delivered or mailed not less than 10 days nor more than 50 days prior to the date thereof, either personally or by postage prepaid mail, at the direction of the Board, the President, or Unit Owners calling the meeting, to each person entitled to vote at such meeting, and to all Eligible Mortgage Holders so requesting under the provisions of Article XI of the Declaration, who may request a representative to attend the meeting of Unit Owners.

The notice of any meeting must state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the Declaration or these Bylaws, and budget changes, and any proposal to remove Board members or officers.

When a meeting is adjourned for less than 30 days in any one adjournment, it is not necessary to give any notice of the adjourned meeting, other than by announcement at the meeting at which the adjournment is effective.

### **2.7 Quorum**

The presence in person or by proxy at any meeting of the Voting Members (as defined in Section 2.8 of this Article) having 50% of the total votes which may be cast for election of the Board shall constitute a quorum. If there is no quorum at the opening of the meeting of Unit Owners, such meeting may be adjourned from time to time by the vote of a majority of the Voting Members present, either in person or by proxy; and at any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the original meeting.

The Voting Members at a meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Voting Members to leave less than a quorum.

## **2.8 Voting Rights**

There shall be one person with respect to each Unit ownership who shall be entitled to vote at any meeting of the Unit Owners (the "Voting Member"). The Voting Member may be the Owner, or one of a group composed of all of the Owners of a Unit, or may be some other person designated by such Owner(s) to act as proxy on his or their behalf, and who need not be an Owner. Each Owner or group of Owners shall be entitled to one vote for each Unit owned. No votes allocated to a Unit or Units owned by the Association may be cast.

## **2.9 Majority Vote**

The vote of a majority of the Voting Members present at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where a higher percentage vote is required by the Declaration, these Bylaws or by law.

## **2.10 Proxies**

The Voting Members may vote either in person or by agents duly authorized by written proxy executed by such Unit Owner or his duly authorized attorney-in-fact. A proxy shall be valid only for the particular meeting designated therein, unless the person executing it specifies therein the length of time for which it is to continue in force, which time shall not extend beyond one year from the date of its execution. Unless a proxy otherwise provides, any proxy holder may appoint in writing a substitute to act in his place. In order to be effective, all proxies must be dated and filed with the Secretary or duly acting Secretary of the Association, either during or prior to the meeting in question. A proxy is void if it is not dated.

## **2.11 Waiver of Notice**

Any Voting Member may, at any time, waive notice of any meeting of the Association in writing, and such waiver shall be deemed to be equivalent to the giving of such notice. Attendance by a Voting Member at any meeting of the Association shall constitute a waiver of notice by him of the time and place thereof, except where a Voting Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called.

## **2.12 Informal Action by Unit Owners**

Any action which may be taken at a meeting of the Association may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Voting Members and filed with the Secretary of the Association to be kept in the Association's minute book.

# **ARTICLE III: EXECUTIVE BOARD**

## **3.1 Number**

The business and property of the Condominium shall be managed and directed by the Executive Board (the "Board"), composed of three persons, or by such executive committees as the Board may establish pursuant to the Bylaws. The size of the Board may be increased or decreased from time to time upon the affirmative vote of three-fourths of all Unit Owners, provided that said Board shall not be less than three in number.

## **3.2 Initial Members**

The initial members of the Board (referred to as "Directors" herein) shall be selected by the Declarant, and need not be Unit Owners. Such initial directors shall serve at the election of the Declarant from the date upon which the Declaration is recorded in the Office of the Register of Deeds for Mecklenburg County until such time as their successors are duly elected and qualified.

The names and addresses of the persons who shall serve on the initial Board from the date upon which the Declaration is so recorded in the Mecklenburg County Public Registry until such time as their successors are duly elected and qualified are as follows:

- Larry Davis, 1819 Sardis Road North, Suite 330, Charlotte, North Carolina 28270
- Brenda Blackwell, 1819 Sardis Road North, Suite 330, Charlotte, North Carolina 28270
- David Rasenberg, 1819 Sardis Road North, Suite 330, Charlotte, North Carolina 28270

### **3.3 Election**

Except as provided herein, the directors shall be elected at the annual meeting of the Association, and those persons who receive the highest number of votes shall be deemed to have been elected. Notwithstanding anything herein to the contrary, the Board shall consist of three Directors during the period that Declarant is entitled to appoint a majority of the Directors. The Declarant shall have the right to appoint or remove the Directors until the earlier of the following three dates: (a) within 120 days after the date by which 75% of the Units (including any Units which may be created pursuant to Special Declarant Rights) have been conveyed to Unit purchasers other than Declarant; (b) two years after all Declarants have ceased to offer Units for sale in the ordinary course of business, or (c) two years after any development right to add additional Units under the Act was last exercised.

The Declarant can turn over control of the Association to such Unit Owners other than the Declarant prior to such dates in its sole discretion by causing all or part of its appointed Directors to resign, whereupon it shall be the affirmative obligation of Unit Owners other than the Declarant to elect Directors and assume control of the Association. Provided at least 30 days notice of Declarant's decision to cause its appointees to resign is given to Unit Owners, neither the Declarant, nor such appointees, shall be liable in any manner in connection with such resignations even if the Unit Owners other than the Declarant refuse or fail to assume control.

Within 60 days after the Unit Owners other than the Declarant are entitled to elect such Director or Directors, or sooner if the Declarant has elected to accelerate such event as aforesaid, the Association shall call, and give not less than 10 days nor more than 50 days' notice of a meeting of the Unit Owners to elect such Director or Directors of the Board. The meeting may be called and the notice given by any Unit Owner if the Association fails to do so.

### **3.4 Term and Qualification**

Each Director shall hold office for the term for which he was elected, or until his death, resignation, retirement, removal, disqualification or until his successor is elected and qualified. Each such Director shall serve for a one-year term. Nothing herein contained shall be construed to prevent the election of a Director to succeed himself. Each Director, except those selected by the Declarant pursuant to the Bylaws, shall be one of the Unit Owners or co-owners, provided, however, that in the event a Unit Owner is a corporation, partnership, trust or other legal entity other than a natural person or persons, then an officer or director of such corporation, partner of such partnership, beneficiary of such trust or manager of such other legal entity shall be eligible to serve as a Director.

### **3.5 Removal**

Directors may be removed from office with or without cause by the affirmative vote of at least 67% of the Voting Members. If any Directors are so removed, new Board members may be elected at the same meeting; provided, however, that the person(s) selected by Declarant cannot be removed without the prior written consent of Declarant.

### **3.6 Vacancies**

A vacancy occurring in the Board may be filled by a majority of the remaining Directors, though less than a quorum, or by the sole remaining director, but a vacancy created by an increase in the authorized number of Directors shall be filled only by election at an annual meeting or a special meeting of Unit Owners called for

that purpose. The Voting Members may elect a Director at any time to fill any vacancy not filled by the Board.

In the event that Declarant, in accordance with the rights herein established, selects any person to serve on the Board, Declarant shall have the absolute right at any time, in its sole discretion, to replace such person with another person to serve on the Board. Replacement of any person designated by Declarant to serve on the Board shall be made by written instrument delivered to any officer of the Association, which instrument shall specify the name of the person to be replaced and the name of the person designated as successor to the person so removed from the Board. The removal of any such Board member and the designation of his successor shall be effective immediately upon delivery of such written instrument by Declarant to any officer of the Association.

### **3.7 Compensation**

The Board shall receive no compensation for their services unless expressly allowed by the Board at the direction of the Unit Owners other than the Declarant having two-thirds of the total votes.

### **3.8 Executive Committees**

The Board may, by resolution adopted by a majority of the number of Directors fixed by these Bylaws, designate two or more of its members to constitute an executive committee, which committee, to the extent provided in such resolution, shall have and may exercise all of the authority of the Board in the management of the Condominium.

The Board may, in like manner, create such other committees as it deems necessary and appropriate in aiding the Board to carry out its duties and responsibilities with respect to the management of the Condominium.

### **3.9 Powers and Duties**

The Board shall have the powers and duties necessary for the administration of the affairs of the Condominium, and may do all such acts and things, except such acts as by law or the Declaration or by these Bylaws may not be delegated to the Board. Such powers and duties of the Board shall include, but shall not be limited to, the following:

1. Determining the Common Expenses required for the affairs of the Condominium, including, without limitation, the operation and maintenance of the Property.
2. Collecting the Common Expenses from the Unit Owners.
3. Supervising the operation, care, upkeep and maintenance of the Common Elements.
4. Employing and dismissing the personnel necessary for the maintenance and operation of the Common Elements.
5. Adopting and amending such reasonable rules and regulations as it may deem advisable for the maintenance, conservation, and beautification of the Property, and for the health, comfort, safety, and general welfare of the owners and occupants of the Property. Written notice of such rules and regulations shall be given to all Unit Owners and occupants, and the entire Property shall at all times be maintained subject to such rules and regulations.
6. Opening bank accounts on behalf of the Condominium and designating the signatories required therefor.
7. Selling, mortgaging, voting the votes appurtenant to, or otherwise dealing with Units acquired by the Association, or its designee, corporate or otherwise, on behalf of all Unit Owners, subject to the Declaration and other applicable restrictions, and organizing corporations to act as designees of the Board in acquiring title to Units on behalf of all Unit Owners.
8. Maintaining and repairing any Unit, if such maintenance or repair is necessary in the discretion of the Board or by operation of applicable restrictions to protect the Common Elements or any other portion of the Property, and a Unit Owner 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 Board to said Unit Owner; provided, however, that the Board shall levy a specific

assessment against such Unit Owner for the costs of said maintenance or repair, including a reasonable amount for supervision.

9. Entering any Unit when necessary in connection with any maintenance or construction for which the Board is responsible; provided that, except in the event of emergencies, such entry shall be made during reasonable hours with as little inconvenience to the Unit Owner as practical, and any damage caused thereby shall be repaired by the Board, with such expenses being treated as a Common Expense.
10. Signing all agreements, contracts, deeds, and vouchers for the payment of expenditures and other instruments in such manner as from time to time shall be determined by written resolution of the Board. Provided, however, that any contracts or leases executed on behalf of the Association prior to the passage of control of the Board to the Association must be terminable by the Association without penalty on not less than 90 days written notice. In the absence of such determination by the Board, such document shall be signed by the Treasurer and countersigned by the President.
11. Obtaining insurance for the Property, including the Units, pursuant to the applicable provisions of the Declaration.
12. Making or contracting for repairs, additions, and improvements to, or alterations or restorations of, the Property 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 condemnation or eminent domain proceeding.
13. Contracting for all goods, services and insurance, payment for which is to be made from the Common Expense fund.
14. Instituting, defending, or intervening in litigation or administrative proceedings in the name of or on behalf of the Association or two or more Unit Owners on matters affecting the Condominium.
15. Borrowing money on behalf of the Condominium, when required in connection with the operation, care, upkeep, and maintenance of the Common Elements; provided, however, that the consent of the Unit Owners of at least two-thirds of the Units represented at a meeting at which a quorum has been attained in accordance with the provisions of these Bylaws shall be required for the borrowing of any sum in excess of \$10,000.
16. Imposing charges for late payment of assessments and, after notice and an opportunity to be heard, levying reasonable fines for violations of the Declaration, the Bylaws, or rules and regulations established by the Association, all in accordance with Sections 47C-3-107 and 47C-3-107.1 of the Act.
17. At its discretion, authorizing Unit Owners or other persons to use portions of the Common Elements for private parties and gatherings and imposing reasonable charges for such private use.
18. Exercising (i) all powers specifically set forth in the Declaration, the Articles of Incorporation, these Bylaws and in the Act, (ii) all powers incidental thereto, and (iii) all other powers of a nonprofit North Carolina corporation.
19. Suspending the right of any Unit Owner to vote as long as said Unit Owner is delinquent in the payment of Common Expenses or is otherwise in violation of the Declaration or any exhibits thereto or applicable rules and regulations.
20. Granting easements for the installation and maintenance of electrical, natural gas, telephone, cable television, water and sewerage utilities and drainage facilities upon, over, under and across the Common Elements without the assent of the Lot Owners if such easements are requisite for the convenient use and enjoyment of the Association as determined in the sole discretion of the Board including but not limited to, the granting of cross easements to The Colony Lofts Condominium Homeowners Association, Inc.

### **3.10 Managing Agent**

The Board may engage the services of any person, firm, or corporation to act as managing agent at a compensation established by the Board, to perform such duties and services as the Board shall authorize, other than the powers set forth in subdivisions (1), (5), (7), (8), (9), (16) and (17) of Section 3.9 of this Article III. Any management agreement for the Condominium shall be terminable by either party without cause and without payment of a termination fee or penalty upon 90 days or more written notice thereof and the terms of such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. Any management agreement shall be terminable by either party for cause upon the giving of not less than 30 days written notice. When professional management has been previously utilized, any



decision to establish self-management by the Association shall require the prior consent of 67 percent of the Unit Owners.

### **3.11 Duties of Declarant**

Within a reasonable time after Unit Owners other than the Declarant elect a majority of the members of the Board (but not more than 60 days after such event), the Declarant shall deliver control of the Association and shall deliver to the Association all property of the Unit Owners and of the Association held or controlled by the Declarant, including, if applicable:

1. The original or a photocopy of the recorded Declaration of Condominium, and all amendments thereto. If a photocopy is provided, the Declarant must certify by affidavit that it is a complete copy of the actual recorded Declaration.
2. A copy of the Articles of Incorporation of the Association.
3. A copy of the Bylaws of the Association.
4. The minute books, including all minutes, and other books and records of the Association.
5. Any rules and regulations which have been adopted.
6. Resignations of resigning officers and Board members.
7. Association funds or the control thereof.
8. A copy of the plans and specifications utilized in the construction or remodeling of improvements on the Property and the supplying of equipment and for the construction and installation of all mechanical components servicing the improvements and the Condominium, with a certificate, in affidavit form, of an officer of the Declarant or an architect or engineer authorized to practice in North Carolina, that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the Condominium and the construction and installation of the mechanical components serving the Improvements and the Property.
9. Insurance policies.
10. Copies of any Certificates of Occupancy which may have been issued for the Condominium.
11. Any other permits issued by governmental bodies applicable to the Condominium in force or issued within one year prior to the date the Unit Owners take control of the Association.
12. All written warranties of contractors, subcontractors, suppliers and manufacturers, if any, that are still effective.
13. A roster of Unit Owners and their addresses and telephone numbers, if known, as shown on the Declarant's records.
14. Employment contracts or service contracts in which the Association is one of the contracting parties, or service contracts in which the Association or Unit Owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.
15. All other contracts to which the Association is a party.

## **ARTICLE IV: MEETINGS OF DIRECTORS**

### **4.1 Organizational Meeting**

The first meeting of the initial Board designated in these Bylaws shall be held at such time as the Declarant shall determine, but in no event later than one year from the date of incorporation of the Association. The first meeting of the first Board elected at that point after which Unit Owners other than the Declarant are entitled to elect a majority of the directors shall be held within 15 days following the meeting of the Unit Owners at which the Board was elected. No notice shall be necessary to the newly elected members of the Board in order to legally constitute such meeting, provided that a quorum is present.

### **4.2 Regular Meetings**

A regular meeting of the Board shall be held immediately after, and at the same place as, the annual meeting or substitute annual meeting of the Unit Owners. In addition, the Board may provide by resolution the time and place, either within or without the State of North Carolina, for the holding of a regular meeting of the Board.

### **4.3 Special Meetings**

Special meetings of the Board may be called by the President, or by any two Directors. Such meetings may be held either within or without the State of North Carolina.

### **4.4 Notice of Meetings**

Regular meetings of the Board may be held without notice. The person(s) who called a special meeting of directors shall, at least two days prior to said meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called.

### **4.5 Waiver of Notice**

Any member of the Board may at any time waive notice of any meeting of the Board in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice of such meeting except where a member attends the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called and he does so object.

### **4.6 Quorum**

A majority of the number of Directors fixed by these Bylaws shall be required for and constitute a quorum for the transaction of business at any meeting of the Board. The Directors at a meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum.

### **4.7 Manner of Acting**

Except as otherwise provided in this Article, the act of the majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board. A vote of a majority of the number of Directors fixed by these Bylaws shall be required to adopt a resolution constituting an executive committee.

### **4.8 Organization**

Each meeting of the Board shall be presided over by the President, and in the absence of the President, by any person selected to preside by vote of the majority of the Board members present. The Secretary, or in his absence, an Assistant Secretary, or in the absence of both the Secretary and the Assistant Secretary, any person designated by the President of the meeting shall act as secretary of the meeting.

### **4.9 Informal Action of Board**

Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

### **4.10 Minutes**

The Board shall keep minutes of its proceedings, which shall be available for inspection by the Unit Owners during reasonable business hours.

### **4.11 Liability of the Board and Officers**

The Directors and the officers provided for in Article V hereof shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each of the Directors and the officers against all contractual liability to others arising out of contracts made by the Board or the officers on behalf of the Condominium, unless any such contract shall have been made in bad faith or contrary to the provisions of the

Declaration or these Bylaws. It is intended that the Directors or any officer shall have no personal liability with respect to any contract made by them on behalf of the Condominium, except to the extent that they are Unit Owners and have liability as such. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board or the officers, or out of the aforesaid indemnity in favor of the directors or the officers, shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interests of all the Unit Owners in the Common Elements. Every agreement made by the Board, by the managing agent or by the officers on behalf of the Condominium shall provide that the members of the Board, the managing agent or the officers, as the case may be, are acting only as agents for the Unit Owners, and shall have no personal liability thereunder.

#### **4.12 Attendance of Unit Owners**

Regular meetings of the Board shall not be open to Unit Owners; provided, however, Unit Owners may request to attend meetings of the Board for a specific purpose as stated in a written request to the Board, which request shall be considered by the Board in its sole and absolute discretion.

### **ARTICLE V: OFFICERS**

#### **5.1 Number**

The principal officers of the Condominium shall consist of a President, a Secretary, a Treasurer, and such Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Board may from time to time elect. Any two or more offices may be held by the same person, except the offices of President and Secretary.

#### **5.2 Election and Term**

The officers of the Condominium shall be elected by the Board. The President, Vice President, Secretary and Treasurer shall be elected from among the Board, and all other officers, if any, need only be a Unit Owner. The officers elected by the initial Board are not required to be Unit Owners. The election of the officers may be held at the regular annual meeting of the Board.

Each officer shall hold office for a period of one year, or until his death, resignation, retirement, removal, disqualification, or until his successor is elected and qualifies.

#### **5.3 Removal**

Any officer or agent elected or appointed by the Board may be removed by the Board, with or without cause.

#### **5.4 Compensation**

No officer shall receive any compensation from the Condominium for acting as such.

#### **5.5 President**

The President shall be the principal executive officer of the Condominium, and, subject to the control of the Board, shall supervise and control the management of the Condominium. The President shall, when present, preside at all meetings of the Board and of the Unit Owners and, in general, shall perform all duties incident to the office of President, including the preparation, execution, certification, and recordation, with the Secretary, of amendments to the Declaration on behalf of the Association, and such other duties as may be prescribed from time to time by the Board.

#### **5.6 Vice President**

The Vice President, and if there be more than one, the Vice Presidents, designated by the Board, shall, in the absence or disability of the President, have the powers and perform the duties of said office. In addition, each Vice President shall perform such other duties and have such other powers as shall be prescribed by the President or by the Board.

### **5.7 Secretary**

The Secretary shall keep accurate records of the acts and proceedings of all meetings of Unit Owners and directors. He shall give, or cause to be given, all notices required by law and by these Bylaws. He shall have general charge of the minute books and records of both the Association and the Board. He shall sign such instruments as may require his signature, and, in general, shall perform all duties incident to the office of secretary, including the preparation, execution, certification, and recordation, with the President, of amendments to the Declaration on behalf of the Association, and such other duties as may be assigned him from time to time by the President of the Board or by the Board.

### **5.8 Treasurer**

The Treasurer shall receive and deposit in appropriate bank accounts all Condominium funds and securities, and shall receive, deposit or disburse the same under the direction of the Board. He shall keep full and accurate accounts of the finances of the Condominium in books especially provided for that purpose. He shall cause a true statement of its assets and liabilities as of the close of each fiscal year, and of the results of its operations and changes in surplus for each fiscal year, all in reasonable detail, to be prepared and distributed to all Unit Owners and members of the Board on or before the 15th day of the second month following the close of each fiscal year. The statement so filed shall be kept available for inspection by any Unit Owner for a period of three years. The Treasurer shall also prepare and file all reports and returns required by federal, state or local law, and shall perform all other duties as may be assigned to him from time to time by the President of the Board or by the Board.

### **5.9 Assistant Secretaries and Treasurers**

The Assistant Secretaries and Assistant Treasurers, if any, shall, in the absence of the Secretary and Treasurer, respectively, have all the powers and perform all of the duties of those officers, and they shall perform such other duties as shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or by the Board.

## **ARTICLE VI: OPERATION OF THE PROPERTY**

### **6.1 Assessment and Determination of Common Expense**

The Board shall from time to time, and at least annually, prepare a budget for the Condominium, for the purpose of determining the amount of the Annual Assessments to be collected from the Unit Owners in order to provide for the Common Expenses of the Condominium, and allocate and assess such Common Expenses among the Unit Owners, according to their Percentage of Interest in the Common Elements as set forth in the Declaration, taking into consideration any expected income and any surplus from the prior year's operations. The Common Expenses shall include, without limitation: the expenses, costs and charges incurred in connection with the administration, operation and management of the Condominium property; the cost of maintenance, repair, replacement and restoration of the Common Elements, or any part thereof; the cost of all insurance premiums on all policies of insurance required to be or which have been obtained by the Board pursuant to the provisions of the Declaration; such amounts as the Board may deem proper for the convenience, comfort and well-being of the Unit Owners, and for the operation, management and maintenance of the Property, including, without limitation, an amount for working capital of the Condominium, for a general operating reserve, for a reserve fund for replacement or improvement to the Common Elements and those Limited Common Elements the Association is obligated to maintain, and to make up any deficit in the Common Expenses for any prior year; in proper cases, the cost of administration and of maintenance and repair of the Limited Common Elements; and any other expenses lawfully agreed upon.

In establishing a reserve fund for replacements, the Board shall take into account the number and nature of replaceable assets, the expected life of each asset and the expected repair or replacement cost. The Board shall then set the required capital contribution in an amount sufficient to permit meeting by equal annual installment, over the applicable period the projected capital needs of the Association with respect to both amount and timing.

Within 30 days after adoption by the Board of any proposed budget for the Condominium, the Board shall provide a summary of the budget to all Unit Owners and shall give notice of a date for a meeting of the Unit Owners to consider ratification of the budget not less than 14 nor more than 30 days after mailing of the summary and notice. Notwithstanding Section 4.6 of these Bylaws, a quorum need not be present at the meeting. The budget is ratified unless at the meeting a majority of all the Unit Owners (whether or not present at the meeting) votes to reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Board.

## **6.2 Payment of Assessments**

All Unit Owners shall be obligated to pay (a) Annual Assessments of Common Expenses assessed by the Board pursuant to the provisions of Section 6.1; (b) special assessments to be established and collected as provided herein, and (c) specific assessments against any Unit which are established pursuant to the terms of these Bylaws. Annual Assessments shall be due and payable in monthly installments on the first day of every month. A late payment charge in an amount to be determined by the Board shall be assessed for any installment not paid by the tenth of the month. Any installment not paid during the month in which it is due shall be subject to the late payment charge and shall accrue interest as provided in Section 6.5, and shall constitute a lien on the Unit as provided in Section 6.6.

No Unit 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, together with his interest in the Common Elements (and Limited Common Elements, if any). A purchaser of a Unit shall be jointly and severally liable with the seller for the payment of Assessments assessed against such Unit prior to the acquisition by the purchaser of such Unit only if the purchaser expressly assumes such obligation in writing; provided, however the lien assessed against such Unit shall remain in full force and effect. Any such purchaser shall be entitled to a statement from the Board setting forth the amount of the unpaid Assessments against the seller, and the Unit conveyed shall not be subject to a lien for any unpaid assessments in excess of the amount shown on the statement. Provided, however, that an Institutional Lender or other purchaser of a Unit at a foreclosure sale of such Unit or an Institutional Lender who takes a deed in lieu of foreclosure shall not be liable for, and such Unit shall not be subject to, a lien for the payment of Common Expenses assessed prior to the foreclosure sale or deed in lieu of foreclosure. Such unpaid Common Expenses shall be deemed to be Common Expenses collectible from all of the Unit Owners, including such purchaser, his successors and assigns.

## **6.3 Special Assessments**

The Association may levy Special Assessments for Common Expenses not covered by the Annual Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Elements, including fixtures and personal property related thereto, provided that any such Assessment shall have the assent of two-thirds of the Voting Members at a meeting duly called for this purpose. Such Special Assessments shall be charged to the Units according to their Allocated Interests in the Common Elements. In addition, the Board may levy Special Assessments against one or more, but less than all, of the Units to cover repairs or maintenance for which such Unit Owner or Unit Owners are responsible and which they have failed to make, or for repairs or maintenance required of a Unit Owner or Unit Owners which impair the value of the Common Elements or the Unit or Units, or expenses which are incurred in the abatement of or as a result of a violation by a Unit Owner or Owners of the provisions of the Declaration, the Bylaws or the Rules and Regulations, or for fines levied for said violations, or where the Board has purchased a Unit on behalf of one or more Unit Owners. The period of assessment and manner of payment of such assessment shall be determined by the Board.

## **6.4 Collection of Assessments**

The Board shall determine Common Expenses against the Unit Owners from time to time, at least annually, and may, as the Board shall determine, take prompt action to collect any Assessments due from any Unit

Owner which remain unpaid for more than 30 days from their due date.

The Board shall notify Eligible Mortgage Holders pursuant to the provisions of the Declaration of any amount assessed pursuant to these Bylaws which remains unpaid for more than 60 days from its due date, and in any other case where the Unit Owner of such Unit is in default with respect to the performance of any obligation hereunder for a period in excess of 60 days.

### **6.5 Default in Payment of Assessment**

In the event of default by any Unit Owner in paying to the Board any amounts assessed by the Board, such Unit Owner shall be obligated to pay a late payment charge as established by the Board from time to time, and interest at the rate of eighteen percent (18%) per annum on such amounts from their due date, together with all expenses, including attorneys' fees (as permitted by law), incurred by the Board in collecting such unpaid sums. If a Unit Owner shall be in default in payment of an installment of an Assessment, including but not limited to, the monthly installment based on the annual budget, the Board may accelerate the remaining installments upon ten days' written notice to such Unit Owner, whereupon the entire unpaid balance of such Assessment shall become due upon the date stated in such notice.

The Board may appoint an Adjudicatory Panel composed of five (5) Unit Owners, which may include members of the Board. The Adjudicatory Panel shall have the authority to levy fines not to exceed One Hundred and Fifty (\$150.00) per violation for a violation of the Declaration, these Bylaws, or any Rules and Regulations enacted by the Board. Prior to the imposition of any such fine, the Adjudicatory Panel shall send to the defaulting Unit Owner written notice of the proposed fine and notice of the date, time and location for a hearing before the Adjudicatory Panel at which time the defaulting Unit Owner and the panel may present evidence. The notice of hearing shall be delivered personally or sent by certified mail before the hearing date. The Adjudicatory Panel shall provide the defaulting Unit Owner written notice of its decision once it is reached. The fine shall be an assessment secured by a lien under Section 47C-3-116 of the Act.

### **6.6 Lien and Personal Obligation**

Each Assessment provided for in this Article, together with late payment charges, interest and expenses, including attorneys' fees (as permitted by law), shall be a charge on and a continuing lien upon the Unit against which the Assessment is made when a notice of such lien has been filed of record in the office of the Clerk of Superior Court of Mecklenburg County, North Carolina, in the manner provided by Article 8, Chapter 44, of the North Carolina General Statutes, provided such notice of lien shall not be recorded until such sums assessed remain unpaid for a period of 30 days after the same shall become due. Said notice of lien shall also secure all Assessments against the Unit becoming due thereafter until the lien has been satisfied. Said lien may be foreclosed in the manner as a deed of trust on real property. In addition, each Unit Owner shall be personally liable for any Assessment against his Unit becoming due and payable while he is the Owner of such Unit.

### **6.7 Priority of Assessment Lien**

The lien of the Assessments provided for in this Article shall be prior and superior to all other liens except (a) ad valorem taxes and (b) all sums unpaid on deeds of trust, mortgages or other encumbrances against the Unit prior to the docketing of the Assessment lien. The sale or transfer of any Unit shall not affect the Assessment lien against such Unit. Provided, however, the sale of a Unit pursuant to the foreclosure sale or execution sale instituted by a superior lien holder or conveyance to Mortgagees by deed in lieu of foreclosure shall extinguish the inferior Assessment lien against the subject Unit but no such sale or transfer shall relieve each Unit from liability for any Assessments thereafter becoming due or for any future lien in connection therewith. The Association shall share in the excess, if any, realized by the sale of any Unit pursuant to a foreclosure or action instituted by a superior lien holder, to the extent of its lien.

## **6.8 Owners Non-Use**

No Unit Owner may exempt himself from liability for Assessments and his other obligations to the Association by waiver of the use or enjoyment of any portion of the Common Elements or by the abandonment or sale of his Unit.

## **6.9 Foreclosure of Liens for Unpaid Assessments**

The Board, acting on behalf of the Association, or on behalf of any one or more individual Unit Owners, if so instructed, shall have the power to purchase such Unit at the foreclosure sale and to acquire, hold, lease, mortgage, vote the votes appurtenant to, convey or otherwise deal with the same, subject, however, to applicable restrictions of record. A suit to recover a money judgment for unpaid Assessments shall be maintainable without foreclosure or waiver of the Assessment lien. Where an institutional lender or the purchaser of a Unit obtains title to the Unit as a result of foreclosure of a mortgage, such purchaser, its successors and assigns, shall not be liable for the share of the Common Expenses or Assessments by the Board chargeable to such Unit which became due prior to the acquisition of title to such Unit by such purchaser. Such unpaid share of Common Expenses or Assessments shall be deemed to be a Common Expense collectible from all Unit Owners, including such purchaser, its successors and assigns.

## **6.10 Statement of Common Expenses**

The Board shall promptly provide to any Unit Owner so requesting in writing a written statement of all unpaid charges due from such Unit Owner, for which it may impose a reasonable charge at its discretion.

## **6.11 Abatement and Enjoinment of Violations by Unit Owners**

The violation of any rule or regulation adopted by the Board, the breach of any Bylaw contained herein, or the breach of any provision of the Declaration, shall give the Board the right, in addition to any other rights set forth in these Bylaws: (a) to enter the Unit in which, or as to which, such violation or breach exists, and to make any repairs, and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing, or condition which may exist therein contrary to the intent and meaning of the provisions hereof, and the Board shall not thereby be deemed guilty in any manner of trespass, but no items of construction shall be altered or demolished pursuant to this authority before judicial proceedings are instituted; (b) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, at the expense of the defaulting Unit Owner, the continuance of any such breach; (c) in any case of flagrant or repeated violation by a Unit Owner, to require such Unit Owner to give sufficient sureties for his future compliance with such Condominium documents; or (d) after notice and an opportunity to be heard, to levy reasonable assessments and fines in accordance with Sections 47C-3-107 and 47C-3-107.1 of the Act for such violations. The failure of the Board or Adjudicatory Panel to so act with respect to any such violation or breach shall not be deemed a waiver of the Board's or Adjudicatory Panel's right to act with respect to the same or any other breach.

## **6.12 Maintenance and Repair**

**6.12(a) By Unit Owners** Each Unit Owner shall maintain, repair, and replace, at his sole cost and expense, all portions of his Unit which may become in need of maintenance, repair, or replacement, including, without limitation, all bathroom and kitchen fixtures and appliances, light fixtures, interior, non-loadbearing walls, doors, floors, ceilings, carpeting, drapes and other items within the Unit, whether structural or nonstructural, ordinary or extraordinary (other than maintenance of and repairs to any Common Elements not specifically set forth herein contained therein and not necessitated by the negligence, misuse or neglect of the Unit Owner, his employees, guests, agents, servants, lessees, invitees or contractors). Each Unit Owner shall clean the Limited Common Elements appurtenant to his Unit and replace all light bulbs in fixtures (if any) located in such Limited Common Elements. Each Unit Owner shall be responsible for replacing all heating and air conditioning filters, if any, required in his Unit. Each Unit Owner shall further be responsible for all damages to any and all other Units and/or to the Common Elements which his failure to undertake his maintenance responsibility may cause. All damages to the Common Elements or other Units intentionally or negligently

caused by the Unit Owner, his employees, guests, agents, servants, lessees, invitees or contractors shall be promptly repaired by the Unit Owner at his sole cost and expense; provided that there is excluded from the provisions contained in this section such repairs necessitated by casualties insured against by the Association to the extent the Association receives insurance proceeds for such repairs. The Unit Owner shall be in said instance required to pay such portion of the costs of such maintenance, repair and replacement as shall exceed the amount of the applicable insurance proceeds. If the Unit Owner does not make those repairs to be made by him within 30 days from written demand by the Board, the same may be repaired by the Board, and the cost thereof shall be assessed against the Unit owned by the subject Unit Owner.

**6.12(b) By the Association** The Association shall maintain, repair, and replace all of the Common Elements (except as provided in Section 6.12(a) above or in the Declaration) which shall require same, whether located inside or outside of the Units (unless necessitated by the negligence, misuse or neglect of a Unit Owner, his employees, guests, agents, servants, lessees, invitees or contractors, in which case such expense shall be charged to such Unit Owner, or unless herein provided to the contrary), and the cost thereof shall be charged to all the Unit Owners as a Common Expense.

### **6.13 Restrictions on Unit Owners**

No Unit Owner shall perform or cause to be performed any maintenance, repair or replacement work which disturbs the rights of the other Unit Owners, jeopardizes the soundness or the safety of the Condominium property, or reduces the value thereof. Each Unit Owner shall cause any work so performed or being performed on the Unit, which, in the sole opinion of the Board, violates the terms of this section, to be immediately corrected, and he shall refrain from recommencing or continuing any such work without written consent of the Board.

### **6.14 Duty to Report**

Each Unit Owner shall promptly report to the Board or its agent any defect or need for repairs or replacement the responsibility for which is that of the Association.

### **6.15 Additions, Alterations or Improvements by the Association**

Whenever in the judgment of the Board, the Common Elements shall require additions, alterations or improvements, the Board shall proceed with such additions, alterations or improvements, and shall assess all Unit Owners for the costs thereof, as a Common Expense, subject, however, to the provisions of Sections 6.1 and 6.3.

### **6.16 Additions or Improvements by Unit Owners**

No Unit Owner shall make any addition, alteration or improvement in or to his Unit which impairs the structural integrity or mechanical systems or lessens the support of any part of the Condominium. No Unit Owner shall make any addition, alteration or improvement which affects the exterior portion or outward appearance of such Unit, without the prior written consent thereto of the Board. The Board shall have the obligation to answer any written request by a Unit Owner for approval of a proposed addition, alteration or improvement in or to such Unit Owner's Unit within 30 days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board to the proposed addition, alteration or improvement.

### **6.17 Use of Common Elements and Facilities**

A Unit Owner shall not interfere with the use of the Common Elements by the remaining Unit Owners and their employees, guests, agents, servants, lessees, invitees, or contractors.



### **6.18 Conveyance or Encumbrance of Common Elements**

All or portions of the Common Elements may be conveyed or subjected to a security interest by the Association in accordance with the provision of Section 47C-3-112 of the Act.

### **6.19 Right of Access**

Unit Owner shall grant a right of access to his Unit to the managing agent and/or any other person authorized by the Board or the managing agent, for the purpose of making inspections or for the purpose of correcting any condition originating in his Unit and threatening another Unit or a Common Element, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements in his Unit or elsewhere in the Buildings, or to correct any condition which violates the provisions of any mortgage covering another Unit, provided that requests for entry are made in advance, and that any such entry is at a time reasonably convenient to the Unit Owner. In the case of an emergency, such right of entry shall be immediate, whether or not the Unit Owner is present at the time such request for entry is made, and whether or not such entry is at a time reasonably convenient to the Unit Owner.

### **6.20 Rules of Conduct**

Rules and Regulations concerning the use of the Units and the Common Elements may be promulgated and amended by the Board. Such Rules and Regulations shall be equally applicable to all Unit Owners and shall be uniform in their application and effect. Copies of such Rules and Regulations shall be furnished by the Board to each Unit Owner prior to their effective date.

### **6.21 Remedies Cumulative**

All rights, remedies and privileges granted to the Association or the Owner or Owners of a Unit pursuant to any terms, provisions, covenants or conditions of the Condominium Documents shall be cumulative, and the exercise of any one or more shall not constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be available to such party at law or in equity.

### **6.22 Nonwaiver of Remedies**

1. The failure of the Association or any Unit Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association or the Unit Owner to enforce such right provision, covenant or condition in the future.
2. The failure of Declarant to enforce any right, privilege, covenant or condition which may be granted to it by the Condominium Documents shall not constitute a waiver of the right of Declarant to thereafter enforce such right provision, covenant or condition in the future.
3. The failure of a mortgagee to enforce any right, provision, privilege, covenant or condition which may be granted to it or them by the Condominium Documents shall not constitute a waiver of the right of said party or parties to thereafter enforce such right, privilege, covenant or condition in the future.

## **ARTICLE VII: RECORDS AND AUDITS**

### **7.1 Reports**

The Board shall keep detailed records of the actions of the Board and the managing agent minutes of the meetings of the Board, minutes of the meetings of the Association, and financing records and books of account of the Condominium, including a chronological listing of receipts and expenditures, as well as a separate account for each Unit which, among other things, shall contain the amount of each Assessment against each Unit, the date when due, the amounts paid and the balance remaining unpaid. A current copy of the Declaration, Articles of Incorporation of the Association, these Bylaws, any currently effective Rules and Regulations, and the Association's books, records and financial statements shall be available for examination by all Unit Owners, their duly authorized agents or attorneys, and all holders, guarantors, or insurers of

First Mortgages secured by Units, their attorneys and authorized agents, at convenient hours during normal business hours that shall be set and announced for general knowledge. A written annual summary of all receipts and expenditures of the Condominium shall be rendered by the Board to all Unit Owners on or before the 15th day of the second month following the close of each fiscal year. In addition, an annual report of the receipts and expenditures of the Condominium shall be rendered by the Board to all Unit Owners and to all Eligible Mortgage Holders who have requested the same, promptly after the end of each fiscal year.

## **7.2 Common Expense Funds**

All sums collected by the Association, either as Assessments for the Common Expenses or as Special Assessments may be commingled in a single fund, but they shall be held for the Unit Owners for the purposes for which they are paid, and shall, subject to the right of withdrawal or refund provided herein, be credited to accounts from which shall be paid the charges for which the Assessments are made. Such accounts shall include the following, or such other and further accounts as the Board from time to time shall determine:

1. General Common Expense Account to which shall be credited collection of that portion of the Common Expense Assessments received for defraying the costs of operating the Condominium on a day to day basis, including normal maintenance and repairs, insurance and related charges; and
2. Capital Reserve Account to which shall be credited, all sums collected which are to be allocated for capital expenditures for the reconstruction, repair and replacement of Common Elements at a future date.

All sums collected by the Association during the fiscal year, either as assessments of the Common Expenses or as special assessments, and allocated to the General Common Expense Account or to any other account from which noncapital expenditures may be made, in excess of expenditures during such fiscal year made from or chargeable to said account or accounts shall be deemed contributions to capital at the end of said fiscal year, and shall be transferred to the Capital Reserve Account. All amounts credited to said Capital Reserve Account shall be contributions to capital, and shall be held in trust by the Association for future expenditures of a capital nature, and shall serve to reduce the Assessments required for said capital expenditures.

## **7.3 Audits**

All books of account and financial records shall be kept in accordance with good and acceptable accounting practices. The Board shall have an audit of the books of account and financial records of the Association made by an independent certified public accountant immediately following the close of each fiscal year and the report of such accountant shall be received by the Board and made available for inspection by all Unit Owners and all Eligible Mortgage Holders on or before the 15th day of the second month following the close of each fiscal year.

# **ARTICLE VIII: AMENDMENTS TO BYLAWS**

## **8.1 Notice**

Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered.

## **8.2 Adoption**

A resolution for the adoption of a proposed amendment may be proposed either by a majority of the Board or by not less than one third of the members of the Association. Directors and members of the Association not present in person or by proxy at the meeting considering the amendment may express their approval in writing provided that such approval is delivered to the Secretary at or prior to the meeting. The approval must be by not less than a majority of the votes of members of the Association represented at a meeting at which a quorum has been attained.

### **8.3 Limitation**

No amendment may be adopted which would eliminate, modify, prejudice, abridge, or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the Declarant or Eligible Mortgage Holders without the consent of said Declarant and Eligible Mortgage Holder in each instance. No amendment shall be made that is in conflict with the Articles of Incorporation of the Association or Declaration without satisfaction of the requirements therein contained. So long as the Declarant controls the Association and the Federal Housing Administration (FHA) holds or insures any First Mortgage on a Unit, the Federal Housing Administration (FHA) shall have the right to veto any amendment to the Bylaws. No amendment to this Section shall be valid.

### **8.4 Execution and Recording**

A copy of each amendment shall be attached to a certificate certifying that the amendment was duly adopted as an amendment to the Declaration and Bylaws, which certificate shall be executed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association with the formalities of a deed, or by the Declarant alone if the amendment has been adopted consistent with the provisions of the Declaration allowing such action by the Declarant. The amendment shall be effective when the certificate and a copy of amendment is recorded in the Office of the Register of Deeds for Mecklenburg County, North Carolina.

## **ARTICLE IX: CONDEMNATION**

### **9.1 General**

Whenever all or any part of the Condominium Property shall be taken by any authority having the power of condemnation or eminent domain, each Unit Owner and all Eligible Mortgage Holders shall be entitled to notice thereof and to participate in the proceedings incident thereto unless otherwise prohibited by law. The award made for such taking shall be payable to the Association. Unless otherwise provided by law at the time of such taking, any award made therefor shall be disbursed by the Association as provided in this Article IX.

### **9.2 Common Elements**

If the taking is confined to the Common Elements (general or limited) on which improvements shall have been constructed, and at least 80% of the total vote of the members of the Association entitled to vote shall vote within 60 days after such taking to replace the improvements, or any part thereof, on the remaining land included in the Common Elements (general or limited) and according to the plans therefor first approved by the Association, then the Board shall arrange for such replacement and the Association shall disburse the proceeds of such award in the same manner as they are required to disburse insurance proceeds where damage or destruction to the Common Elements (general or limited) is to be repaired or reconstructed as provided for herein; subject, however, to the right hereby reserved to the Association to provide by a majority vote of the Voting Members, for the disbursement by the Association of the remaining proceeds held by it (after the payment of all costs incident to such replacement) to the Unit Owners, or to any one or more of them or to their institutional lenders as their interests may appear in amounts disproportionate to their percentages of undivided interest in the Common Elements (general or limited) established herein, which disproportionate amounts shall correspond with the disproportionate damage sustained by the Unit Owners or any one or more of them as the Association may determine. If at least 80% of the Voting Members shall not decide within 60 days after such taking to replace said improvements, or if the taking is confined to the Common Elements (general or limited) on which no improvements shall have been constructed, then the Association shall disburse the proceeds of the award provided for the disbursement of the remaining proceeds of an award after payment of all costs incident to replacement of improvements taken has been made, including the right reserved to the Association to provide for the disbursement of the remaining proceeds held by it to the Unit Owners in disproportionate amounts. All disbursements made under this Section 9.2 shall be in strict compliance with Section 47C-1-107 of the Act.

### **9.3 Units**

If the taking includes one or more Units, or any part or parts thereof, whether or not there is included in the taking any part of the Common Elements (limited or general), then the award shall be disbursed and all related matters shall be handled pursuant to and in accordance with the consent of all Unit Owners and First Mortgagees affected, and thereafter the Board shall reallocate that Unit's Allocated Interests in a duly recorded amendment to the Declaration of Condominium in accordance with Section 47C-1-107 of the Act.

### **9.4 Termination**

The Board shall call a meeting of all Unit Owners at least 45 days prior to any final taking by the condemning authority to determine the action to be taken pursuant to Sections 9.2 and 9.3 above. Except in the event of a taking of all the Units by eminent domain, in the event the condemnation involves more than 10% of the value of the Common Elements (limited or general) and/or more than 15% of the total value of all Units, the Condominium may be terminated at such meeting by written approval of not less than 80% of the Voting Members and in accordance with the provisions of the Declaration. Any termination agreement shall be in compliance with 47C-2-118 of the Act.

## **ARTICLE X: ARCHITECTURAL CONTROL**

No building, fence, or other structure shall be commenced or maintained upon the Common Elements, including the Limited Common Elements, nor shall any exterior addition, change or alteration therein be made until plans and specifications showing the nature, kind, shape, height, materials, and location of same shall have been submitted to and approved in writing as to harmony of external design and location in relation to the surrounding structure and topography by the Board of the Association or by any architectural committee appointed by the Board. All structures shall be of standard design employed by Declarant in the original construction of such amenities in the Condominium project. In the event the Board or its designated committee fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required, and this Article X shall be deemed to have been fully complied with. Provided that nothing herein contained shall be construed to permit interference with the development of the Condominium property by the Declarant.

## **ARTICLE XI: MISCELLANEOUS**

### **11.1 Ad Valorem Taxes**

Each Unit shall be deemed to be a separate parcel and shall be separately assessed and taxed. Each Unit Owner shall be liable solely for the amount of tax assessed against his Unit and shall not be affected by the consequences resulting from the tax delinquency of other Unit Owners. All tangible personal property owned by the Association in connection with the maintenance, upkeep and repair of the Common Elements shall be listed for said taxes in the name of and paid by the Association. Each Unit Owner is also responsible for his prorata share of taxes assessed on his portion of the Common Elements, if any.

### **11.2 Notification to Mortgagee**

Any Owner who mortgages his Unit shall notify the Association of the name and address of the mortgagee, and the Association shall maintain such information in a book entitled "Mortgagees of Condominiums." In addition to any other notification provided for in the Declaration or these Bylaws, the Association may, at the written request of a mortgagee of any such Unit, report any unpaid assessments due from the Owner of such Unit. The Association shall notify each mortgagee appearing in said book of the name of each company insuring the Condominium Property under the master policy and the amounts of the coverages thereunder.

### **11.3 Severability**

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

#### **11.4 Successors Bound**

The rights, privileges, duties and responsibilities set forth in the Declaration or these Bylaws, as amended from time to time, shall run with the ownership of the Property and shall be binding upon all persons who own or hereafter acquire any interest in the Property.

#### **11.5 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.

#### **11.6 Principal Office: Registered Office**

The initial principal office and registered office of the Association shall be located at 1819 Sardis Road North, Suite 330, Charlotte, NC 28270.

#### **11.7 Other Offices**

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

#### **11.8 Seal**

The seal of the Association shall contain the name of the Association, the word "Seal," the state of incorporation and such other words and figures as are desired by the Board. When obtained, the seal shall be impressed in the margin of this Section of the Bylaws.

#### **11.9 Fiscal Year**

The fiscal year of the Association shall be the calendar year.

### **CERTIFICATION**

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting secretary of Shops At The Colony Owners Association, Inc., a North Carolina non-profit corporation, and

THAT the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the initial Executive Board thereof held on the 25<sup>th</sup> day of November, 2002.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association, this 25<sup>th</sup> day of November, 2002.

Brenda Blackwell, signed Secretary

### **EXHIBITS C AND D TO DECLARATION OF SHOPS AT THE COLONY CONDOMINIUM**

#### **PLATS AND PLANS**

The condominium plat of survey for Shops At The Colony Condominium dated November 12, 2002, prepared by Mitcham & Associates, P.A., entitled "Condominium Plat Shops At The Colony Condominium Phase 1 Map 3" and the plans for Shops At The Colony Condominium, prepared by Charles E. Leaf, AIA. dated November 13, 2002, together consisting of two (2) sheets, which are attached to this Declaration at the time filed by record is duly filed in the Office of the Register of Deeds for Mecklenburg County, North Carolina in Condominium Unit File No. 629. Said survey and plans are incorporated herein by reference as though fully set out herein.

## EXHIBIT E TO DECLARATION OF SHOPS AT THE COLONY CONDOMINIUM

Unit Number	Heated Square Footage	Common Element Interest Percentage
A	660	11.163
B	656	11.096
C	656	11.096
D	654	11.062
E	656	11.096
F	656	11.096
G	656	11.096
H	656	11.096
I	662	11.197
TOTAL	14,736	100%

## EXHIBIT F TO DECLARATION OF SHOPS AT THE COLONY CONDOMINIUM

### PERMITTED EXCEPTIONS

1. Ad valorem taxes.
2. Restrictive covenants of record.
3. All general service and utility easements affecting the Property.
4. Building restriction lines, easements and other facts shown on plat recorded in Map Book 6 at Page 903 in the Mecklenburg County Public Registry.

### REGISTRATION

JUDITH A. GIBSON REGISTER OF DEEDS, MECKLENBURG COUNTY COUNTY & COURTS OFFICE  
BUILDING 720 EAST FOURTH STREET CHARLOTTE NC 28202

Filed For Registration: 12/09/2002 03:16 PM Book: RE 14510 Page: 542-599 Document No.: 2002244057  
DEC/U 58 PGS \$182.00

Recorder: SERENA ROSS

State of North Carolina, County of Mecklenburg

The foregoing certificate of BRENDA Y. BLACKWELL, JACQUELINE C. MCIVER Notaries are certified to be correct This 9TH of December 2002

JUDITH A GIBSON, REGISTER OF DEEDS By: Serena M. Ross

Deputy/Assistant Register of Deeds