

Prepared by and return to: Lori P. Jones, Jordan Price, P.O. Box 10669, Raleigh, NC 27605

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM  
FOR ONE HUNDRED EDENBURGH CONDOMINIUM**

**NOTICE IS HEREBY GIVEN THAT THIS DOCUMENT REGULATES  
OR PROHIBITS THE DISPLAY OF THE FLAG OF THE UNITED  
STATES OF AMERICA AND STATE OF NORTH CAROLINA AND  
REGULATES OR PROHIBITS THE DISPLAY OF POLITICAL SIGNS.**

STATE OF NORTH CAROLINA

AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM  
FOR ONE HUNDRED EDENBURGH  
CONDOMINIUM

WAKE COUNTY

This Amended and Restated Declaration of Condominium for One Hundred Edenburgh Condominium (the "Declaration") is made this 29<sup>th</sup> day of December, 2020, by all of the Owners of Units within the Condominium.

WITNESSETH

WHEREAS, Rene Langford, Inc., a North Carolina corporation, caused to be recorded a Declaration of Condominium for One Hundred Edenburgh Condominium in Book 6118, Page 304 of the Wake County Registry ("Original Declaration"); and,

WHEREAS, the Owners of all of the Units with the Condominium desire to amend and restate the Declaration as set forth below;

NOW THEREFORE, the undersigned hereby declare that this Amended and Restated Declaration of Condominium for One Hundred Edenburgh Condominium shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the property, which property is described in Exhibit A attached hereto and incorporated herein by reference, or any part thereof, and shall inure to the benefit of each owner thereof. Such property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the provisions of this Amended and Restated Declaration of Condominium for One Hundred Edenburgh Condominium and the easements, restrictions, covenants and conditions described herein, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of such property. This Amended and Restated Declaration of Condominium for One Hundred Edenburgh Condominium shall amend and supersede and fully replace the Original Declaration. The property subject to this Declaration shall be held, sold, and conveyed subject to Chapter 47C of the North Carolina General Statutes, as it may be amended from time to time.

## 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**    “Act” or “North Carolina Condominium Act” means the provisions of Chapter 47C of the North Carolina General Statutes as the same now exists or may hereafter be amended, or any new enactment in substitution or replacement thereof as the same by law may be applied to this Condominium.

**Section 1.2**    “Association” shall mean and refer to One Hundred Edinburgh Condominium Homeowners Association, Inc., a North Carolina non-profit corporation, which shall manage the Condominium as specified in this Declaration, its Articles of Incorporation and corporate Bylaws, and the Act.

**Section 1.3**    “Board” or “Board of Directors” shall mean and refer to those persons elected or appointed and acting collectively as the Directors of the Association, and on behalf of the Association, as prescribed in the Declaration and the Bylaws.

**Section 1.4**    “Building” shall mean and refer to the building constructed on the Condominium Property, including all Units and Common Elements therein.

**Section 1.5**    “Bylaws” shall mean and refer to the Bylaws of the Association, and all amendments to such Bylaws which may from time to time be adopted.

**Section 1.6**    “Common Elements” shall mean and refer to all portions of the Condominium and Condominium Property other than the Units. Common Elements shall also include Limited Common Elements as defined below.

**Section 1.7**    “Common Elements Interest” shall mean and refer to the undivided interest in the Common Elements and the Common Expense Liability allocated to each Unit, expressed as a percentage. Every Unit has an equal undivided ownership interest of twelve and one-half percent (12.5%) in the Common Elements. The votes in the Association are not allocated based on the Common Elements Interest. Instead, one (1) vote is assigned to each Unit.

**Section 1.8**    “Common Expenses” shall mean and refer to any and all expenditures made by or financial liabilities of the Association, together with any allocations to reserves. Common Expenses include, without limitation:

- (a) All sums lawfully assessed against the Owners by the Association;
- (b) Expenses of administration, maintenance, repair, or replacement of the Common Elements including the cost of any management company engaged by the Association;
- (c) Expenses agreed upon as Common Expenses by the Association;
- (d) Expenses declared to be Common Expenses by the provisions of the Act, the Declaration or by the Bylaws;
- (e) Hazard, and such other insurance premiums as the Act, the Declaration and/or Bylaws may require or allow the Association to purchase;
- (f) Taxes and public assessments levied against the Common Elements not otherwise assessed against the Units;
- (g) Any utilities which serve the Common Elements;
- (h) Expenses associated with provision of on-site security services.

**Section 1.9** “**Condominium**” shall mean and refer to the One Hundred Edinburgh Condominium, as established by the submission of the Condominium Property and all improvements thereon to the condominium form of property ownership.

**Section 1.10** “**Condominium Documents**” shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the Bylaws, and the Rules and Regulations governing the use of the Condominium Property, as amended and supplemented from time to time, and all attachments and exhibits thereto.

**Section 1.11** “**Condominium Property**” or “**Property**” shall mean the real property described on Exhibit A, together with all buildings and improvements now or hereafter constructed or located thereon, and all rights, privileges, easements and appurtenances belonging to or in any way pertaining to said real property.

**Section 1.12** “**Declarant**” shall mean and refer to Rene Langford, Inc., a North Carolina corporation, the entity recording the original restrictive covenants for the Condominium. The Declarant no longer owns any interest in the Condominium.

**Section 1.13** “**Declaration**” shall mean and refer to this Amended and Restated Declaration of Condominium for One Hundred Edinburgh Condominium, as it may be amended or supplemented from time to time.

**Section 1.14** “**Limited Common Elements**” shall mean and refer to those portions of the Common Elements allocated by this Declaration, or by the terms of N.C.G.S. §47C-2-102(2) or (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 1.15** “**Member**” shall mean any person or entity entitled to membership in the Association as provided herein.

**Section 1.16** “**Mortgage**” shall mean and refer to a first mortgage or deed of trust constituting a lien on a Unit.

**Section 1.17** “**Mortgagee**” shall mean and refer to the owner and holder of the indebtedness secured by a first Mortgage that has notified the Association in writing of its name and address, that it holds a Mortgage on a Unit, and that it desires to be given the notices and other rights described in Article XVI.

**Section 1.18** “**Owner**” shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Unit, but shall exclude those persons or entities having an interest in any Unit as merely security for the payment or performance of an obligation.

**Section 1.19** “**Person**” shall mean and refer to a natural person, a corporation, limited liability company, a partnership, joint venture, a trust, or any other legal entity.

**Section 1.20** “**Plans**” shall mean and refer to the plat, plans and specifications for the Building and Condominium Property, including any amendments thereto, recorded under the name of the Condominium in Condominium File Number 156, Pages 1-6 in the Public Registry, also referred to as Condo Map 1994, Page 156 in the Public Registry.

**Section 1.21** “**Public Registry**” shall mean and refer to the office of the Register of Deeds of Wake County, North Carolina.

**Section 1.22** “**Rules and Regulations**” shall mean and refer to all rules and regulations adopted by the Board in accordance with the terms of this Declaration.

**Section 1.23** “**Unit**” shall mean and refer to that physical portion of the Condominium designated for separate ownership or occupancy, the boundaries of which are more particularly described in Article IV below.

In addition, the definitions set forth in N.C.G.S. §47C-1-103 are incorporated in this Declaration by reference, 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 AND DESCRIPTION OF CONDOMINIUM

**Section 2.1     The Condominium.** The Condominium is located in Wake County, North Carolina. The Condominium Property and all improvements thereon are together hereby subjected to the terms of the North Carolina Condominium Act by this Declaration. The name of the Condominium is "One Hundred Edinburgh Condominium."

**Section 2.2     Maximum Number of Units.** There are a total of eight (8) Units within the Condominium located within the Building. The total number of Units in the Condominium may not exceed eight (8) Units.

## ARTICLE III DESCRIPTION OF BUILDINGS

The Condominium Property and all improvements thereon shall together initially comprise the Condominium. There is a single three-story building housing all eight (8) Units. The Building is more particularly described in the Plans.

## ARTICLE IV DESCRIPTION OF UNITS

**Section 4.1     Location of Building.** The location and dimensions of the Building are shown on the Plans.

**Section 4.2     Units.** The location of Units within the Condominium, their dimensions, and their floor and ceiling elevations, are shown on the Plans. The identification number for each Unit is set forth on Exhibit B.

**Section 4.3     Unit Boundaries.** Each Unit is bounded both as to horizontal and vertical boundaries by its perimeter walls, ceilings, and floors, which are shown on the Plans. All lath, furring, wallboard, sheetrock, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the finished flooring, and any other materials constituting any part of the finished surfaces of the walls, floors, and ceilings are part of the Unit. Furthermore, all interior walls, partitions, fixtures, appliances, cabinets and other facilities or improvements lying completely within the boundaries of a Unit shall be a part of such Unit. If any chute, flue, duct, wire, pipe for water or sewer, conduit,

load bearing wall, load bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof serving only that Unit is a Limited Common Element allocated exclusively to that Unit, and any portion thereof serving more than one Unit or any portion of the Common Elements is a part of the Common Elements. Any portions of the heating, ventilating, and air-conditioning systems, including fans, compressors, return air grills and thermostats designed to serve a single Unit, even if located outside that Unit's boundaries, shall be a part of the Unit.

## ARTICLE V COMMON ELEMENTS

**Section 5.1 Common Elements.** The Common Elements include all portions of the Condominium that are not part of the Units, including without limitation all the following:

- (a) The Condominium Property.
- (b) All improvements located within the Condominium Property outside of the Units, including without limitation the Limited Common Elements, as well as the lobby, interior stairwells, elevators, and interior corridors within the Condominium.
- (c) The foundations, roofs, columns, girders, beams, supports, exterior and interior load-bearing walls, floors within and between Units (but excluding finished flooring), and all other structural elements of the Condominium.
- (d) Any public connections and facilities for utility services serving the Building and Common Elements which are located within the Common Elements that are not owned by the public utility or municipal agency providing such services, until owned or maintained by the public utility or municipal agency providing such service.
- (e) All tangible personal property required for the operation and maintenance of the Condominium that may be owned by the Association.
- (f) All walks, driveways, and parking areas.

**Section 5.2 Limited Common Elements.** The Limited Common Elements are a subset of the Common Elements that are allocated by the Declaration or by operation of Section 47C-2-102(2) or (4) of the Act for the exclusive use of one or

more but fewer than all of the Units. The Limited Common Elements include all of the following:

- (a) Those portions of any chute, flue, duct, wire, pipe for water or sewer, conduit, bearing wall, bearing column, or any other fixture located partially within and partially outside the designated boundaries of the Unit, but which serve one or more but fewer than all of the Units, shall be a Limited Common Element allocated exclusively to the Unit(s) served.
- (b) Any shutters, awnings, window boxes, doorsteps, terraces, stoops, decks, porches, balconies, patios, and all exterior doors and windows and components thereof, and all other fixtures which serve one or more but fewer than all of the Units, shall be a Limited Common Element allocated exclusively to the Unit(s) served.
- (c) Those areas indicated as Limited Common Elements on the Plans which shall be allocated as described therein.

References in this Declaration to the "Common Elements" shall include the Limited Common Elements unless the context clearly indicates otherwise. The allocation of use of Limited Common Elements to the Units as provided for in this Declaration shall not be altered without the unanimous consent of the Owners whose Units are affected.

**Section 5.3     Undivided Interests of Owners in Common Elements.**

The percentage ownership interest in the Common Elements allocated to each Unit is set forth on Exhibit C attached hereto. Each Unit is allocated an equal Common Element Interest. The Common Elements Interest allocated to each Unit shall not be changed except with the unanimous consent of all the Owners of all the Units, except as may be specifically authorized by the Act or elsewhere in this Declaration.

**Section 5.4     Maintenance of Common Elements.** The Association, at its expense, shall be responsible for the maintenance, repair, and replacement of the Common Elements. Should any incidental damage be caused to any Unit by virtue of any work which may be done or caused to be done by the Association in the maintenance, repair or replacement of any Common Elements, the Association shall, at its expense, repair such incidental damage.

Whenever the maintenance, repair and replacement of any item which the Association is obligated to maintain, replace or repair at its expense is occasioned by the negligence or intentional act of an Owner, any resident of the Unit, a tenant, or the guests or invitees of any of them, and such loss or damage may be covered by any insurance maintained in force by the Association, the proceeds of the insurance

received by the Association shall be used for the purpose of making such maintenance, repair or replacement, except that the Owner who is responsible for the act causing the damage (whether done by himself or by his employees, servants, guests, invitees or lessees) shall be required to pay such portion of the cost of such maintenance, repair and replacement as shall, by reason of the applicability of any deductible provision of such insurance, exceed the amount of the insurance proceeds applicable to such maintenance, repair or replacement. If not promptly paid, the Association may assess the Owner thereof and the same shall become a lien against the Unit of the Owner as provided herein.

Whenever the maintenance, repair and replacement of any item which the Association is obligated to maintain, replace or repair at its expense is occasioned by the negligence or intentional act of an Owner, any resident of the Unit, a tenant, or the guests or invitees of any of them, and such loss or damage is not covered by any insurance maintained by the Association, then the Owner shall pay the cost thereof; and, if not promptly paid upon request, the Association may assess the Owner thereof and the same shall become a lien against the Unit of the Owner as provided herein.

The Association shall not maintain any Limited Common Elements, which shall be the responsibility of the Owner, or if more than one, Owners of the Unit or Units to which it is allocated, in accordance with the respective Common Elements Interests, each against the other(s).

**Section 5.5     Maintenance Responsibilities of the Unit Owner.** Each Unit Owner shall be responsible for the maintenance and repair of all portions of his or her Unit and the Limited Common Elements appurtenant thereto, excluding all structural elements. Such maintenance shall include, without limitation:

- (a) Maintaining in a clean and orderly fashion all Limited Common Elements, including balconies attached to respective Units and personal property placed thereon;
- (b) Maintenance, repair, and replacement of windows and all components thereof, as well as interior and exterior doors and all components thereof, serving the Unit;
- (c) Maintenance, repair, and replacement of all blinds, shutters, drapes, or other interior window coverings;
- (d) Maintenance, repair, and replacement of any heating, ventilating, and air conditioning systems serving the Unit(s);
- (e) Maintenance and repair of balconies and terraces and associated components, except for structural elements;

- (f) Maintenance, repair, and replacement of all glass surfaces serving the Unit(s);
- (g) Maintenance, repair, and cleanliness of the interior of the Unit so as to prevent any unsanitary or unsafe condition that would tend to adversely affect or cause damage to the Common Elements or another Unit.

The cost of maintenance and repair of the Limited Common Elements shall be the responsibility of the Owner, or if more than one, Owners of the Unit or Units to which it is allocated on an equal basis. The Board may enter upon a Unit or any portion of the Condominium Property to perform maintenance or make repairs thereon which is the responsibility of a Unit Owner who has failed to perform such maintenance or make such repairs (i) after having given such Owner at least ten (10) days prior notice, or (ii) without giving notice in the event of an emergency. The costs of the same shall be assessed against the Owner thereof and the same shall become a lien against the Unit of the Owner as provided herein.

**Section 5.6     Parking.** All parking areas within the Condominium are part of the Common Areas. However, the Board may from time to time assign designate or re-designate individual parking spaces for the use of a particular Unit. Such designation does not convert said parking space into a Limited Common Element. Unit Owners shall not park or store any motorcycle, camper, trailer, trailer vehicle, boat, or similar vehicle on the property. No trucks shall be permitted except for standard 2-ton or less pickup trucks or smaller sized trucks.

## ARTICLE VI RESTRICTIONS ON USE

The following covenants, restrictions, conditions and limitations as to use and occupancy shall run with the Condominium Property and shall be binding upon each Owner, his or her family members residing in or occupying his or her Unit, guests, invitees, tenants, licensees, heirs, executors, administrators, successors and assigns.

**Section 6.1     Use.** Except as otherwise set forth herein, no Unit may be used for any purpose other than residential use and other purposes ancillary to such use. No Unit may be used for business or trade purposes at any time except with the written approval of the Board, which the Board may grant so long as the primary use is residential, no business customers of the resident(s) visit the Unit, such business does not otherwise violate the provisions of the Declaration or Bylaws, and the business does not create a disturbance or unduly increase traffic flow or parking congestion, which shall be judged in the sole discretion of the Board. Notwithstanding the foregoing, leasing of a Unit in accordance with this Declaration shall not be considered a business or business activity.

**Section 6.2     Nuisance.** No obnoxious, offensive or unlawful activity shall be conducted within any Unit, or on or about the Common Elements, nor shall anything be done thereon or therein which may be or which may become an annoyance or nuisance to the other Owners, or endanger the health and safety of any Owner. All laws, zoning ordinances and regulations of all governmental authorities having jurisdiction of the Condominium shall be observed. Nothing shall be done or kept in any Unit or in the Common Elements that will result in the termination of, or an increase in the premium for, the policy of property insurance for the Condominium.

**Section 6.3     Noise and Disorderly Conduct.** No Owner shall engage in any disorderly conduct on the Condominium Property, or cause or allow any disturbance, including, but not limited to, shouting, singing, or playing any musical instruments or electronic equipment (including radios, stereos, televisions, and computer equipment) in a manner that unreasonably disturbs other Owners.

**Section 6.4     Prohibitions on Use of Common Elements and Limited Common Elements.** Owners shall not utilize the Common Elements for storage of personal property of any kind. Entrances, lobbies, stairwells, corridors, hallways, sidewalks, driveways, and parking areas shall not be obstructed in any way or used for other than their intended purposes. Balconies and private terraces may be used only for their intended purposes. In general, no activity shall be carried on nor conditions maintained by any Owner either in such Owner's Unit or upon the Common Elements or Limited Common Elements which despoils the appearance of the Condominium Property or which interferes with the quiet enjoyment of other Owners with respect to their Units. The Board may enact reasonable rules and regulations regarding the appearance of Limited Common Elements, which rules may prohibit the storage or placement of items or types of items within balconies, terraces, and other Limited Common Elements.

**Section 6.5     Garbage.** Trash, garbage, and other waste shall be kept in sanitary containers within each Unit. Each Owner is responsible for his or her own trash collection and disposal into containers provided by the City of Raleigh. Owners are required to segregate recyclables for placement into specified recycling bins per City ordinance.

**Section 6.6     Leases of Units.** No dwelling may be leased for hotel or transient purposes. All lease agreements shall be in writing and shall be for a term of not less than one (1) year. All lease agreements shall incorporate the requirements of the Declaration, Bylaws, and rules and regulations of the Association, and shall require any lessee to abide by all the obligations set forth in those documents as a condition of the lease agreement. The lease agreement must state that any failure of a lessee to comply with the terms of such documents shall be a condition of default

under the lease. Owners are required to provide lessees with a copy of the Declaration, Bylaws, and rules and regulation of the Association. Every lease shall be filed with the Board prior to a tenant occupying the Unit. No interest in any Unit may be subjected to a time share program, as that term is defined in N.C.G.S. §93A-41(10). .

**Section 6.7    Occupancy.** No more than two (2) persons per bedroom are permitted to reside in a Unit; provided, however, the Board may grant a variance from this provision for good cause shown. In deciding whether to grant a variance, the Board shall consider the size of bedrooms and the dwelling, the age of the occupants, the configuration of the dwelling, other physical limitations of housing (e.g., capacity of septic system), and any other relevant factors. In no event may occupancy exceed any restrictions imposed by applicable law or ordinance.

**Section 6.8    Animals.** No animals of any kind shall be kept or maintained in any Unit except that one (1) domestic dog (*Canis lupus familiaris*) not to exceed sixty (60) pounds in weight or one (1) domestic cat (*Felis catus*) may be kept or maintained in each Unit, provided they are not kept or maintained for commercial purposes.

No pet shall be permitted upon the Common Elements unless carried or leashed by a person that can control the pet, and in no event may any savage or dangerous pet be kept within any Unit or on Common Elements. All pets shall be controlled so as not to create a nuisance or unreasonable disturbance (including loud and excessive barking) whether inside or outside the Condominium. Pets shall not at any time be left unattended nor tied or chained in the Common Elements or any terrace or balcony or other Limited Common Element. Pets shall not be permitted to defecate in the Common Elements or to urinate in any portion of the Common Elements except for grassed areas. Pet owners are responsible for the immediate removal and proper disposal of any pet waste. All pets shall be licensed and inoculated as required by law.

**Section 6.9    Utilities; Sub-metering.** The Association shall be responsible for costs of water, sanitary sewer, and electrical service which serve the Common Elements. Each Unit Owner is responsible for the costs of such utilities serving his or her Unit, including any repair or maintenance of the submeter serving the same.

**Section 6.10    Antennas; Flags; Signage; Holiday Decorations.** Temporary or permanent placement of exterior satellite dishes, antennae, flags (including without limitation the flags of the United States of America or the State of North Carolina), and holiday decorations on the exterior of Units and Common Elements is restricted as follows:

- (a) Flags; Banners; Signs. No flags, banners, political signs, or other signs of whatever nature, including without limitation "For Sale" and "For Rent" signs or commercial signs, shall be displayed on or about the exterior of any Unit, or in the window of any Unit, or on the Common Elements, except as follows:
- i. Directional or regulatory signs as may be deemed necessary or desirable by any governmental unit or the Association, including, but not limited to, street name signs, parking and no parking signs, stop signs, speed limit signs, entrance signs, and building identification signs shall be permitted on the Common Elements.
  - ii. The Association may cause to be erected and maintained upon the Common Elements a flagpole displaying the flag of the United States of America and/or a flagpole displaying the flag of the State of North Carolina.
  - iii. Owners may display the flag of the United States of America in areas in which they have a right of exclusive possession or use, but only in accordance with federal law regarding the appropriate display of the flag; provided, however, the Board may enact reasonable restrictions pertaining to time, place, or manner of displaying the flag of the United States of America as may be necessary to protect a substantial interest of the Association.
  - iv. The Association shall have the right to maintain such signs on the Common Elements as may be appropriate in the discretion of the Board.
- (b) Satellite Dishes, Antennas etc. Satellite dishes greater than one meter in diameter are prohibited. Satellite dishes may not extend into or be placed on the Common Elements. Any request to mount a satellite dish on the roof area requires approval of the Board of Directors. No other exterior radio antennae, television antennae, or other electronic signal-receiving or transmitting equipment shall be placed, allowed, or maintained upon any portion of the Condominium unless otherwise specifically permitted by FCC regulations.

Dishes and accompanying equipment should be painted to the extent possible to blend in with the surrounding area where located. Owners are solely responsible for maintaining satellite dishes and antennas and

all related equipment. Owners will be required to temporarily remove their satellite dishes or antennas at the Owner's cost if reasonably necessary for the Association to perform any of its maintenance obligations. Any damage that is caused by the installation of a satellite dish or antenna will be the sole responsibility of the Owner. Each satellite dish or antenna and all related equipment must be removed by an Owner if no longer in service. Each Owner is responsible for the cost of repairs which may be reasonably necessary to restore the any portion of the Common Elements to the condition prior to the installation of the Owner's satellite dish or antenna and related equipment.

**Section 6.11 Maintenance.** Each Owner shall keep such Unit Owner's respective Unit and Limited Common Elements in a clean, neat, and sanitary condition and in a good state of maintenance and repair. If an Owner fails to comply with the standards or requirements of the Association relative thereto, the Association may (but shall have no obligation to) undertake to effect said compliance, and assess the defaulting Owner the cost thereof which may be collected in the same manner as annual assessments.

**Section 6.12 Insurance.** Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance of the Building or contents thereof without the prior written consent of the Board of the Association. No Unit Owner shall permit anything to be done or kept in his or her Unit or in the Common Elements which will result in the cancellation of insurance on the Building, or contents thereof, or which would be in violation of any law. No waste will be committed in the Common Elements.

**Section 6.13 Landscaping.** No Unit Owner shall install any landscaping and/or plant any vegetable or herb garden in the Common Elements unless the prior written consent of the Board is obtained. The Association reserves the right to remove any planting from the Common Elements without notice in the event written permission for the planting was not obtained from the Board. In addition, if the Owner does not maintain the planting to a standard satisfactory to the Board, or if the Board determines that a different type of planting would be more aesthetically pleasing, the Board may require removal of the planting and the return of the area to its original condition. No ownership rights in the Common Elements are granted to any Owner by virtue of said Owner being permitted to landscape or plant any portion of the Common Elements.

**Section 6.14 Smoking.** There shall be no smoking of tobacco or any other product intended for human inhalation anywhere inside the Building, including within a Unit, or anywhere outside the Building on the Condominium Property; provided however, that this prohibition shall not apply to Unit 204 until such time as

the record owner of Unit 204 as of the date of recording of this Declaration is no longer an occupant of Unit 204.

**Section 6.15 Floor Coverings.** Any second or third floor Unit shall be required to install area rugs or carpets acceptable to the Board over at least 75% of the flooring, which shall include all halls and foyers and other high traffic areas, to help reduce sound transmission to other Units. The Board is authorized to enact additional rules regarding approved floor coverings and to determine what constitutes a high traffic area.

**Section 6.16 Rules and Regulations.** In addition to the use restrictions set forth in this Declaration, reasonable Rules and Regulations governing the use of the Condominium Property, including the Units, may be established and amended from time to time by the Board. Copies of such rules, regulations, and amendments thereto shall be furnished by the Association to all Owners prior to their effective date.

**Section 6.17 Compliance with Covenants, Conditions and Restrictions.** Every Unit Owner and other party described in the first paragraph of this Article shall comply strictly with the covenants, conditions and restrictions set forth in the Condominium Documents and any Rules and Regulations adopted by the Association in relation to the use and operation of the Condominium Property. A violation committed by any persons residing in, occupying or visiting a Unit at the behest or with the implied or express permission of the Unit Owner or any other occupant of the Unit, or committed by any agent, employee, business invitee, or contractor of the Unit Owner or of any person occupying a Unit, shall be attributed to that Unit and the Owner thereof. An Owner may be fined by the Association for failure to comply with the terms of this Declaration, the Bylaws, Articles of Incorporation or published Rules and Regulations in an amount not to exceed One Hundred Dollars (\$100.00) per day per violation, or any higher amount allowed by the Act. Any fine shall be assessed against the Owner and his Unit and, if unpaid, shall be a lien on the Unit as provided herein.

## ARTICLE VII ASSESSMENTS

**Section 7.1 Organization of Association.** A nonprofit North Carolina corporation known and designated as One Hundred Edinburgh Condominium Homeowners Owners Association, Inc. has been organized to provide for the administration of the Condominium Property and to undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and the North Carolina Condominium Act. Every Owner

shall be required to be and shall automatically be a Member of the Association by virtue of his/her ownership interest in a Unit.

**Section 7.2     Authority to Assess Owners.** To properly administer the operation and management of the Condominium, the Association will incur for the mutual benefit of all the Owners certain Common Expenses. To provide the funds necessary for such proper operation, management and capital improvement, the Association is granted the right to make, levy, and collect assessments against the Owners and their Units. Each Owner of any Unit, by acceptance of a deed thereto, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual and special assessments for those purposes outlined below, such assessments to be established and collected as hereinafter provided.

**Section 7.3     Basis of Assessments.** Except as otherwise provided in this Declaration, each Owner shall contribute as its share of the Common Expenses an amount equal to the Owner's Common Elements Interest multiplied by the Common Expenses (the "Common Assessment"). Common Expenses associated with Limited Common Elements shall be assessed against only those Units to which the applicable Common Expenses are allocated, in accordance with the respective Common Elements Interests, each against the other(s).

The Association, acting through the 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 and including Limited Common Elements; provided, however, that any such Special Assessment must be approved by the vote of Owners of Units to which at least sixty-seven percent (67%) of the votes in the Association are allocated (or of the eligible votes where the Special Assessment is for Limited Common Elements only), 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 (or their relative Common Elements Interests where fewer than all Owners are assessed).

In addition to the Common Assessment and the Special Assessment, the Association, acting through the Board may assess individual Unit Owners ("Individual Unit Assessment") for: (i) any costs incurred by the Association by reason of the Owner's failure to maintain its Unit, if the Association takes actions to do so as authorized herein; or (ii) any costs incurred by the Association as a result of such Unit Owner's (or its tenant's, agent's, contractor's, family member's 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 7.4     Manner of Payment.** Assessments provided for herein shall be payable in annual, quarterly, or monthly installments, or in such other installments and at such times, as may be determined by the Board.

**Section 7.5     Commencement.** Assessments shall be levied at least annually by the Association.

**Section 7.6     Annual Budget.** The Board shall establish an annual budget in advance for each fiscal year. Such budget shall project all expenses (including ad valorem taxes and public improvement assessments levied against the Common Elements) for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium, including a reasonable allowance for contingencies and reserves, such budget to take into account projected anticipated income which is to be applied in reduction of the amount required to be collected as an assessment each year.

Within thirty (30) days after adoption of any proposed budget for the Condominium, the Board shall provide a summary of the budget to all the Owners, and shall set a date for a meeting of the Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting two-thirds (2/3) or more of all the Owners reject the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Owners ratify a subsequent budget proposed by the Board. The assessment for said year shall be established based upon such budget. Receipt of a copy of said budget by each Owner shall not affect the liability of any Owner for such assessment.

**Section 7.7     Modification of Assessment.** Should the Board at any time determine, in its sole discretion, that the Common Assessment levied is, or may prove to be, insufficient to pay the costs of operation and management of the Condominium, or in the event of emergencies, the Board shall have the authority to levy such additional assessment or assessments it may deem to be necessary.

**Section 7.8     Capital Improvement Fund.** The Board, in establishing the annual budget for operation, management and maintenance of the Condominium, may designate therein a portion of the annual assessment to be collected and maintained as a reserve fund for replacement of, and the making of capital improvements to, the Common Elements which capital improvement and replacement fund (herein "Capital Improvement Fund") shall, if created, be for the purpose of enabling the Association to replace structural elements and mechanical equipment constituting a part of the Common Elements, as well as the replacement of personal property which may constitute a portion of the Common Elements or be

owned by the Association and held for the joint use and benefit of the Owners of the Units. The amount to be allocated to the Capital Improvement Fund may be established by the Board so as to collect and maintain a sum reasonably necessary to anticipate the need for replacement of Common Elements and other property owned by the Association. The amount collected for the Capital Improvement Fund shall be maintained in a separate account by the Association and such monies shall be used only to make capital improvements to Common Elements. Any interest earned on monies in the Capital Improvement Fund may, in the discretion of the Board, be expended for current operation and maintenance. Each Owner shall be deemed to own a portion of the Capital Improvement Fund equal to his Common Elements Interest in the Common Elements. However, such balance shall not be subject to withdrawal by an Owner.

**Section 7.9 Default; Interest.** The payment of any assessment or installment thereof shall be in default if such assessment or installment is not paid to the Association within thirty (30) days of the due date established by the Association for such payment. When in default, the delinquent assessment or delinquent installment thereof due to the Association shall bear interest at the rate established by the Association not to exceed eighteen percent (18%) per annum, commencing on the date of default and continuing until such delinquent assessment or installment thereof, and all interest due thereon, has been paid in full to the Association.

**Section 7.10 Late Payment Penalty.** In addition to the accrual of default interest, the Association may impose a penalty for nonpayment of any assessment by the due date. Such penalty shall not exceed the greater of twenty dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid and shall otherwise be subject to the provisions of N.C. Gen. Stat. § 47C-3-102(a)(11).

**Section 7.11 Liability of Owners for Assessments and Other Charges.** The Owner of each Unit shall be personally liable, jointly and severally, to the Association for the payment of all assessments, regular or special, which may be levied by the Association against such Unit while such party or parties are Owner or Owners of a Unit. In the event that any Owner is in default in payment of any assessment or installment thereof owned to the Association, such Owner shall be personally liable, jointly and severally, for interest and penalty on such delinquent assessment or installment thereof as above provided, and for all costs of collecting such assessment or installment thereof and interest thereon, including a reasonable attorney's fee, whether suit be brought or not.

**Section 7.12 No Exemption.** No Owner may exempt himself from liability from any assessment levied against him or his Unit by waiver of the use of enjoyment of any of the Common Elements or by abandonment of the Unit or in any other way.

**Section 7.13 Assessments Against Specific Owners.** Notwithstanding the requirement of Section 8.3 that assessments be levied against each Owner according to the Common Elements Interest of each Owner, the Association shall assess:

- (a) any Common Expense associated with the maintenance, repair, or replacement of a Limited Common Element against the Unit or Units to which that Limited Common Element is assigned;
- (b) any Common Expense, or portion thereof, benefiting fewer than all the Units exclusively against the Units benefited;
- (c) the cost of insurance against the Units in proportion to the risk if any Unit or Units can be reasonably determined to create a greater risk than any other;
- (d) the cost of utilities, if not separately metered to each Unit, in proportion to usage if it can be reasonably determined that any Unit or Units use an unusually disproportionate share of any utility;
- (e) the cost of any judgment against the Association against only the Units in the Condominium at the time the judgment was entered in proportion to their Common Expense Liabilities;
- (f) any Common Expense caused by the misconduct of any Owner exclusively against the Owner; and,
- (g) any fine or penalty or interest for any delinquent assessment installment exclusively against the Unit so charged.

**Section 7.14 Assessment Lien Granted.** Recognizing the proper operation and management of the Condominium requires the continuing payment of costs and expense thereof, and that such proper operation and maintenance results in benefit to all of the Owners, and that the payment of such Common Expenses represented by the assessments levied and collected by the Association is necessary in order to preserve and protect the investment of each Owner, the Association is hereby granted a lien upon each Unit and its appurtenant Common Elements Interest, which lien shall secure, and does secure, the monies due for all assessments now or hereafter levied against the Owner of each such Unit, which lien shall also secure penalties and interest, if any, which may be due on the amount of any delinquent assessments owing to the Association, and which lien shall also secure all costs and expenses, including a reasonable attorneys' fee, which may be incurred by the Association in enforcing this lien upon said Unit and its appurtenant Allocated Interest.

The lien granted to the Association may be foreclosed pursuant to the Act and in the same manner that real estate deeds of trust and mortgages may be foreclosed in the State of North Carolina, pursuant to Article 2A of Chapter 45 of the General Statutes and in any suit for the foreclosure of said lien, the Association shall be entitled to a reasonable rental from the Owner of any Unit from the date on which the payment of any assessment or installment thereof became delinquent, and shall be entitled to the appointment of a Receiver for said Unit. The lien granted to the Association shall further secure such advances for taxes, and payments on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at the highest rate allowed by law on any such advances made for such purpose. All Persons who shall acquire, by whatever means, any interest in the ownership of any Unit, or who may be given or acquire a mortgage, lien or other encumbrance thereof, are hereby placed on notice of the lien rights granted to the Association, and shall acquire such interest in any Unit expressly subject to such lien rights.

**Section 7.15 Other Remedies.** This Section does not prohibit the Association from bringing an action to recover sums due it as an assessment independent of any lien filed or claimed, nor does it prohibit the Association from taking a deed in lieu of foreclosure.

**Section 7.16 Judgments.** Any judgment brought hereunder to enforce the lien or the collection of any assessment must include the costs and reasonable attorneys' fees for the prevailing party.

**Section 7.17 Lien Subordinate to Mortgage.** The lien provided for herein is prior to all liens and encumbrances on a Unit except (i) liens and encumbrances, specifically including, but not limited to, a mortgage or deed of trust on the Unit, recorded before the filing of the claim of lien in the office of the clerk of superior court and (ii) liens for real estate taxes and other governmental assessments and charges against the Unit.

**Section 7.18 Statement of Assessments Due.** Whenever any Unit may be leased, sold or mortgaged by the Owner thereof, the Association, upon written request of the Owner, shall furnish to the proposed lessee, purchaser or mortgagee, a statement verifying the status of payment of any assessment which shall be due and payable to the Association by such Unit. Such statement shall be executed by any officer of the Association, and any lessee, purchaser or mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction, and the Association shall be bound by such statement. The Association may charge reasonable fees for the provision of such statements.

**Section 7.19 Purchaser Liable for Delinquent Assessments.** In any voluntary conveyance of a Unit, the Purchaser thereof shall be jointly and severally liable with Seller for all unpaid assessments against Seller made prior to the time of such voluntary conveyance, without prejudice to the rights of the Purchaser to recover from Seller the amounts paid by Purchaser therefore.

**Section 7.20 Remedies.** Institution of a suit at law to attempt to effect collection of the payment of any delinquent assessment shall not be deemed to be an election by the Association which shall prevent it from thereafter seeking, by foreclosure action, enforcement of the collection of any sums remaining owed to it, nor shall proceeding by foreclosure to attempt such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association. All the rights accruing to the Association shall be deemed cumulative.

## **ARTICLE VIII EASEMENTS AND PROPERTY RIGHTS**

**Section 8.1 Easements Imposed by Declarant.** The following easements which were imposed by Declarant in the Original Declaration remain in force, and nothing herein shall be deemed to have terminated such easements:

- (a) Each Unit Owner shall have an easement in common with all other Owners over all other Units to use all pipes, wires, ducts, cables, conduits, public utilities and other common facilities located in any of the other Units and serving each Unit.
- (b) Each Unit Owner has an easement and right of access to any and all Common Elements for the common use of all Owners; provided, the Association shall have the right to establish rules and regulations governing the use of the Common Elements.
- (c) Each Unit is subject to an easement in favor of Owners of all other Units to use the pipes, wires, ducts, cables, conduits, public utilities lines and other common facilities serving other Units located in such Unit.
- (d) Each Unit Owner has an easement to maintain all components of the heating and air conditioning system serving the Owner's Unit in its present location as shown on the Plans.
- (e) An easement is established over all Common Elements for the benefit of applicable governmental agencies for the setting, removing, and reading of water meters, maintaining, and replacing water, drainage and

drainage facilities, firefighting, law enforcement, garbage collection and the delivery of mail.

**Section 8.2 Other Easements.** The Property is subject to those easements, restrictions, and liens recorded in the Public Registry, and all easements depicted on the Plans.

**Section 8.3 Right of Entry.** The Association shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to this Declaration, and to inspect for the purpose of ensuring compliance with this Declaration and rules and regulations, which right may be exercised by the Association, its officers, agents, employees, managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and only after notice at least 24-hours in advance to the applicable Unit Owner as provided herein, and commercially reasonable efforts shall be made to minimize interference with the Unit Owner's possession and enjoyment of its Unit. This right of entry shall include the right of the Association to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Association. Any governmental agency, including, but not limited to the City of Raleigh, their agents, and employees, shall have the right of immediate access to the Common Areas at all times if necessary for the preservation of public health, safety and welfare.

**Section 8.4 Encroachment Easements.** If any portion of the Common Elements now encroaches upon any Unit; or if any Unit now encroaches upon any other Unit or upon any portion of the Common Elements; or if such encroachment shall occur hereafter as a result of the settling or shifting of the Building; then there shall exist a valid easement for the encroachment and for the maintenance of same for so long as the Building shall stand. If the Building or any Unit, or any portion of the Common Elements, is partially or totally destroyed by fire or other casualty, or as a result of condemnation or eminent domain proceedings, and subsequently is rebuilt, encroachments of parts of the Common Elements upon any Unit, or of any Unit upon any other Unit or parts of the Common Elements due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building shall stand.

**Section 8.5 Easements Over Common Elements.** The Board may grant easements for utility purposes for the benefit of the Condominium Property including the right to install, lay, maintain, repair and replace water lines; pipes; ducts; sewer lines; gas mains; telephone and television or cable television wires, cables, fiber optic lines and equipment; and electrical conduits and wires, over, under, along and on any

portion of the Common Elements (including but not limited to those areas within the plenum areas between Units).

**Section 8.6     Conveyance or Encumbrance of Common Elements.**

While the Condominium remains subject to this Declaration and to the provisions of the North Carolina Condominium Act, no conveyances of or security interests or liens of any nature shall arise or be created against the Common Elements without the prior written consent of the Owners entitled to cast at least eighty percent (80%) of the votes in the Association. Nothing in this Section shall be construed to limit the right of any Owner to convey or to encumber such Unit Owner's allocated interest in the Common Elements as an appurtenance to and in connection with the conveyance or mortgaging of such Unit Owner's Unit.

**Section 8.7     Nature of Interest in Unit.** Every 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 Unit shall be entitled to the exclusive fee simple ownership, access to and possession of such Unit Owner's Unit subject to the covenants, conditions, restrictions, easements, uses, limitations, obligations, Rules and Regulations set forth in the Condominium Documents or adopted by the Board and/or the board of directors of the Association.

## **ARTICLE IX INSURANCE**

**Section 9.1     Property Insurance.** The Association shall obtain and maintain at all times a policy of property insurance on the Building, including all Units contained therein, which insurance shall satisfy the following requirements: The Association shall obtain and maintain at all times a policy of property insurance on the Building and Common Elements (ISO special form or its equivalent) in an amount not less than one hundred percent (100%) of the replacement cost of the Building and as well as all Common Elements located outside of the Building at the time such insurance is purchased and at the time of each renewal thereof (excluding the cost of foundations and footings, and the cost of any personal property supplied or installed by Owners), with a commercially reasonable deductible. The policy shall be issued by an insurance company properly licensed to do business in the State of North Carolina. The policy shall provide that the Association is a named insured and that each Owner is an insured person with respect to his Unit and his allocated interest in the Common Elements. The policy shall contain a standard extended coverage endorsement and a standard "all risk" endorsement (unless the policy contains "broad form" covered causes of loss), and an inflation guard endorsement, if available, an earthquake endorsement, if available, and a building ordinance or law endorsement, if available, as well as a special condominium endorsement providing as follows: for waiver of subrogation against any Owner, and any Owner's employees

and agents; that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association and all insureds, including all Owners and Mortgagees named in the mortgage clause; that no act or omission by any Owner will preclude recovery upon such policy; and that if, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy provides primary insurance. Each property insurance policy shall provide that adjustment of loss shall be made by the Association as insurance trustee. Each property insurance policy shall provide for the issuance of certificates or mortgagee endorsements to each Mortgagee.

**Section 9.2 Liability Insurance.** The Association shall obtain and maintain one or more policies of commercial general liability insurance in such limits as the Board may, from time to time, determine, covering each member of the Board, 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. The liability insurance policies shall include endorsements covering cross liability claims of one insured against another, including the liability of the Board or the Owners as a group to one or more Owners, and shall provide that it may not be canceled or substantially modified without at least thirty (30) days' prior written notice to the Board and to all insureds, including all Owners and Mortgagees. The Board shall review such limits annually.

The Association shall obtain and maintain director and officer liability coverage insuring directors and officers of the Association against liability; such coverage to list officers and directors and the Association as named insureds, and in an amount as determined by the Board.

**Section 9.3 Other Insurance Coverage.** The Association shall have the right, in the Association's discretion, to obtain other insurance coverage as it may deem appropriate, including fidelity coverage against dishonest acts on the part of all persons handling, or responsible for handling, funds belonging to or administered by the Board.

**Section 9.4 Premiums & Deductibles.** Premiums upon insurance policies purchased by the Board shall be paid by the Board and charged as a Common Expense. Each Unit Owner shall be responsible for payment of the costs and repairs to his Unit that are not covered by insurance due to the applicability of any deductible provision, and if more than one Unit is damaged, the affected Unit Owners shall pay the cost of the deductible in proportion to the damages sustained. Each Unit Owner agrees that if any portion of the Common Elements which is covered under the Association's insurance policy is damaged or destroyed by any negligent or intentional act of an Owner or his or her family, invitees, or tenants, then such Owner shall be responsible for paying the lesser of: (a) that portion of the insurance deductible applicable to the Common Elements; or (b) the cost to repair and/or replace

any damage to the Common Elements, which amount shall be due within ten (10) days after the delivery of written notice of such costs to the responsible Unit Owner.

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

**Section 9.5 Insurance Obtained by Owners.** Each Owner shall obtain and keep continuously in force additional "All Risk" fire and casualty and extended coverage insurance upon such Owner's Unit, the improvements therein, and such Owner's personal property, to the extent the same are not insured under any policy maintained by the Association, as well as public liability insurance, and such other insurance coverage as such Owner may desire. Each Owner shall obtain and maintain public liability insurance coverage in the amount of at least \$100,000.00 for bodily injury, including deaths of persons and property damage, arising out of a single occurrence. All such insurance policies shall include, however, provisions waiving (i) any right of the insurer to subrogation claims against the Association and against unit owners and their household members, employees and invitees, as well as their tenants and such tenant's employees and invitees; and (ii) any right of the insurer to contribution or proration because of the Association's casualty and public liability policy. Each Owner shall file a copy of each such individual policy with the Board upon request.

**Section 9.6 Distribution of Insurance Proceeds.** All insurance policies procured by the Association shall provide that all losses shall be adjusted with and all proceeds shall be payable to the Association as insurance trustee. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes set forth herein and for the benefit of the Owners in the following shares:

- (a) Proceeds on account of damage to the Common Elements shall be held in undivided shares for each Owner and its Mortgagee, if any, with each Owner's share to be the same as such Owner's allocated Common Elements Interest.
- (b) Proceeds on account of damage to Units shall be held in the following undivided shares:
  - (i) When the damage is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage to each such Owner's Unit, which cost shall be determined by the Association.

- (ii) When the damage is not to be restored, an undivided share for each Owner, such share being the same as each such Owner's allocated Common Elements Interest.
- (c) In the event a mortgagee endorsement or certificate has been issued with respect to a Unit, the share of the Owner shall be held in trust for the Mortgagee and the Owner as their respective interests may appear.
- (d) Proceeds of insurance policies received by the Association as insurance trustee shall be distributed to or for the benefit of the Owners in the following manner:
  - (i) If it is determined, as provided in Article X below, that the damaged property with respect to which the proceeds are paid shall not be reconstructed or repaired, (i) the proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the rest of the Condominium; (ii) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units to which those Limited Common Elements were allocated or to their Mortgagees, in proportion to their respective Common Elements Interests; and (iii) the remainder of the proceeds shall be distributed to all Owners or Mortgagees, as their interests may appear, in proportion to their respective Common Elements Interests. No Owner shall have priority over any rights of the first mortgagee of the Owner's Unit in the case of payment of proceeds for an insured loss.
  - (ii) If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof. Any proceeds remaining after payment of such repair costs shall be distributed to the beneficial Owners.

## ARTICLE X DUTY TO REPAIR OR RECONSTRUCT

**Section 10.1 Reconstruction and Repair.** In the event of damage to or destruction of the Building or any other improvement with respect to which the Association is required to maintain insurance hereunder as a result of fire or other casualty, the Association shall arrange for the prompt restoration and replacement of the Building and such other improvements using the proceeds of insurance, unless (1) the Condominium is terminated in accordance with the Act, or (2) repair or replacement would be illegal under any state or local health or safety statute or

ordinance, or (3) the Owners decide not to rebuild by an eighty percent (80%) vote, including one hundred percent (100%) of Owners of Units not to be rebuilt and one hundred percent (100%) of Owners of Units to which are assigned Limited Common Elements not to be rebuilt. Unless one of the preceding three conditions occurs, the Association shall arrange for the prompt repair and restoration of the Building and such other improvements, not including any decoration or covering for walls, ceilings, or floors, or furniture, furnishings, fixtures or equipment (unless the subject insurance policy covers a portion or all of such loss, in which event the Association shall repair or replace such damaged property), and the Association shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any payment for repair and restoration in excess of the insurance proceeds shall constitute a Common Expense. Any reconstruction or repair shall be in accordance with the Plans. If the Owners vote not to rebuild any Unit, that Unit's allocated Common Elements Interest shall be automatically reallocated upon the vote as if the Unit had been condemned under N.C.G.S. § 47C-1-107(a).

**Section 10.2 Obligations of Owners.** Each Owner will, at his or her sole cost and expense, keep and maintain his or her Unit in good order and repair in accordance with the Plans and any rules duly adopted by the Board, and each Owner will make no structural addition, alteration or improvement to his or her Unit without the prior written consent of the Association, except as specifically permitted by this Declaration or authorized under N.C.G.S. § 47C-2-111. Upon the failure of an Owner to so maintain his or her Unit, the Association shall be authorized (but shall not be obligated) to maintain, repair or restore such Unit, and the cost thereof shall be charged to such Owner and constitute a lien on the Unit until paid.

## ARTICLE XI UNITS SUBJECT TO CONDOMINIUM DOCUMENTS

All present and future Owners, tenants, occupants and/or guests of the Units shall be subject to and shall comply with the provisions of the Condominium Documents, and any Rules and Regulations as may be adopted in accordance with the same, as all of the foregoing may be amended and supplemented from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of all of the above are accepted and ratified by such Owner, tenant or occupant, and an agreement that such provisions shall be deemed and taken to be covenants running with the Condominium and shall bind any Person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance or lease.

## ARTICLE XII AMENDMENT TO DECLARATION

This Declaration may be amended only by the vote of or by written agreement signed by not less than sixty-seven percent (67%) of the votes in the Association; provided, however, that any amendment which amends or alters the percentage of allocated interests of any Unit in the Common Elements, increases the number of Units, changes the boundaries of any Unit, or changes the use to which any Unit is restricted shall require the written approval of all Owners. No amendment to the Declaration shall be effective until executed on behalf of the Board by an officer designated for that purpose and recorded in the Public Registry.

## ARTICLE XIII TERMINATION

The Condominium may be terminated, and the Condominium Property removed from the provisions of the North Carolina Condominium Act only in accordance with N.C. Gen. Stat. §47C-2-118.

## ARTICLE XIV RIGHTS RESERVED TO MORTGAGEES

**Section 14.1 Rights of Mortgagees to Examine Books and Records.** Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage, shall have the right to examine, during normal business hours and upon reasonable notice, the books and records of the Association, including copies of the Condominium Documents, as amended, and the financial statements of the Association, and to be furnished, upon written request, at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within one hundred twenty (120) days following the end of each fiscal year. If any Mortgagee requests, and agrees to pay the cost of the audit, the financial statement shall be audited by an independent certified public accountant.

**Section 14.2 Mortgagee's Rights to Notice.** Any Mortgagee or insurer or guarantor of a loan secured by a Mortgage that has notified the Board in writing of its name and address, the address and Unit number of the Unit encumbered by the Mortgage, or that it holds, insures or guarantees a Mortgage on, shall have the right to receive from the Association prompt written notice of the following:

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

- (b) Any loss or damage to or condemnation or taking of the Common Elements or any loss or damage to or condemnation or taking of a Unit encumbered by a Mortgage held, insured, or guaranteed by such Mortgagee.
- (c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- (d) Any proposed action by the Association, the Board, or the Owners, which under the terms of the Condominium Documents requires the consent of all or any portion of the Mortgagees.

## ARTICLE XV CONDEMNATION

If all or any part of the Condominium Property is 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 of any award payable to the Association as a result of condemnation of all or a portion of the Common Elements shall first be used to restore the damaged area to a condition compatible with the rest of the Condominium or to raze the remaining damaged improvements and thereafter, any remaining proceeds shall be distributed as set forth in N.C.G.S. §47C-1-107. No Owner shall have priority over any rights of the first Mortgagee of the Owner's Unit in the case of payment of proceeds from termination, condemnation, or eminent domain.

## ARTICLE XVI MISCELLANEOUS PROVISIONS

**Section 16.1 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 16.2 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 16.3 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 16.4 Law Controlling.** This Declaration and the Condominium Documents shall be construed and controlled by and under the laws of the State of North Carolina.

**Section 16.5 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 16.6 Incorporation of Exhibits.** Exhibits A, B, and C attached hereto are hereby incorporated herein by this reference.

## **ARTICLE XVII ENFORCEMENT**

**Section 17.1 Actions by the Association.** In addition to and not in lieu of the other remedies for default provided in this Declaration and the other Condominium Documents, the Association acting through the Board may bring a civil action against any Owner to enforce any obligation, covenant or restriction set forth in this Declaration or the other Condominium Documents.

**Section 17.2 Actions by Owners.** Any Owner may also bring a civil action against any other Owner, or against the Association, or against the Board, or any one or more of them to enforce any obligation, covenant or restriction set forth in this Declaration or in the other Condominium Documents.

[Signature Page Follows]

WHEREFORE, the undersigned have set their hands and seals indicating their consent to the Amended and Restated Declaration of Condominium for One Hundred Edinburgh Condominium, and certify that they have the authority to execute the same:

## Unit 101

Oliver Banks  
Printed Name

Oliver Banks  
Signature

## Unit 102

ANN TILLERY, GUARDIAN  
Printed Name FOR JOAN E. PARVELL

Ann Tillery  
Signature

## Unit 201

Kathleen L.P. Tanner  
Printed Name

Kathleen L.P. Tanner  
Signature

## Unit 202

SARA G JENKINS  
Printed Name

Sara G. Jenkins  
Signature

## Unit 203

Kathy O. Roebuck  
Printed Name

Kathy O. Roebuck  
Signature

## Unit 204

Jim PEDER, Jr.  
Printed Name

Jim Pedersen, Jr.  
Signature

## Unit 303

DOROTHY P. ANDREWS  
Printed Name

Dorothy P. Andrews  
Signature

## Unit 304

Lou P. Tippet  
Printed Name

Lou P. Tippet  
Signature

NORTH CAROLINA

## ACKNOWLEDGMENT

WAKE COUNTY

I, Tangie Lancaster, a notary public of Wake County, North Carolina, certify that Daniel L. Raebuck personally appeared before me this day, and being duly sworn, certified that he is not named in the foregoing document and has no interest in the transaction and either (i) witnessed the below-listed principals sign the foregoing document or (ii) witnessed the below-listed principals acknowledge their signature on the already-signed document.

Oliver Banher  
(name of owner)

Kathy O. Raebuck  
(name of owner)

Ann Tillery, Guardian for  
(name of owner) Joan E. Parnell

Jim Penden, Jr.  
(name of owner)

Kathleen L.P. Tanner  
(name of owner)

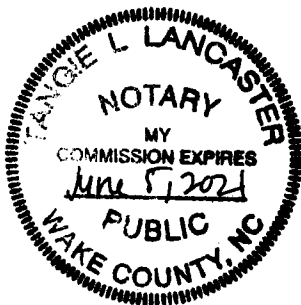
Dorothy P. Andrews  
(name of owner)

Sara G. Jenkins  
(name of owner)

Lou P. Tippet  
(name of owner)

Daniel L. Raebuck  
Signature of Witness  
to persons named above

Witness my hand and official seal, this 29<sup>th</sup> day of December, 2020.



Tangie L. Lancaster  
Notary Public  
Tangie L. Lancaster  
Printed Name

**EXHIBIT A**  
**Property Subject to the Declaration**

BEGINNING at a NC DOT right-of-way monument marking the intersection of Glenwood Avenue (US Highway 70) with Edinburgh Road; runs thence along and with the westerly right-of-way line of Edinburgh Road South  $29^{\circ} 08' 51''$  West 67.68 feet to an iron pin; thence N  $60^{\circ} 24' 05''$  W 195.34 feet; runs thence N  $51^{\circ} 19' 35''$  W 242.85 feet to an iron pin; runs thence N  $18^{\circ} 32' 36''$  E 31.93 feet to an iron pin; runs thence S  $84^{\circ} 24' 41''$  E 370.78 feet to an iron pin; runs thence S  $14^{\circ} 38' 22''$  E 88.96 feet to a NC DOT right-of-way monument; runs thence S  $05^{\circ} 25' 43''$  W 97.66 feet to the point and place of Beginning, containing 1.387 acres, according to a map entitled "Property of White Oak Properties, Inc.," dated July 26, 1993 by Robert T. Newcombe & Associates, P.C., Registered Land Surveyors, and being all of Lots 13, 14 and parts of Lots 11 and 12, Block 22, Lakeview Section of Budleigh as shown on Book of Maps 1941, Page 33, Wake County Registry.

To the extent not covered above, all real property subjected to the Original Declaration shall be deemed to be subject to this Amended and Restated Declaration of Condominium for One Hundred Edinburgh Condominium.

**EXHIBIT B****COMMON ELEMENTS INTEREST**

| <b>Unit Number</b> | <b>Address</b>                                    | <b>Common Element Interest</b> |
|--------------------|---------------------------------------------------|--------------------------------|
| 101                | 100 Edenburgh Road, Unit 101<br>Raleigh, NC 27608 | 12.5                           |
| 102                | 100 Edenburgh Road, Unit 102<br>Raleigh, NC 27608 | 12.5                           |
| 201                | 100 Edenburgh Road, Unit 201<br>Raleigh, NC 27608 | 12.5                           |
| 202                | 100 Edenburgh Road, Unit 202<br>Raleigh, NC 27608 | 12.5                           |
| 203                | 100 Edenburgh Road, Unit 203<br>Raleigh, NC 27608 | 12.5                           |
| 204                | 100 Edenburgh Road, Unit 204<br>Raleigh, NC 27608 | 12.5                           |
| 303                | 100 Edenburgh Road, Unit 303<br>Raleigh, NC 27608 | 12.5                           |
| 304                | 100 Edenburgh Road, Unit 304<br>Raleigh, NC 27608 | 12.5                           |
|                    | <b>TOTAL:</b>                                     | 100.00                         |

## EXHIBIT C

### AMENDED AND RESTATED BYLAWS FOR ONE HUNDRED EDENBURGH CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.

#### ARTICLE I NAME AND LOCATION

The name of the corporation is One Hundred Edinburgh Condominium Homeowners Association, Inc., hereinafter referred to as the "Association".

The principal office of the corporation shall be located in North Carolina. Meetings of Members and directors may be held at suitable places convenient to the Members and the Board, as may be designated by the Board of Directors.

#### ARTICLE II DEFINITIONS

Unless otherwise specified, the words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized words shall have the same meaning as set forth in that certain Amended and Restated Declaration of Condominium for One Hundred Edinburgh Condominium, to which the Bylaws are attached as Exhibit C, which has been recorded in the Wake County Public Registry ("Declaration").

#### ARTICLE III MEETINGS

Section 1. Annual Meetings. An annual meeting of the Members must be held at least once each year.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the president of the Association or by a majority of the Board, or upon written request of Owners having twenty percent (20%) of the votes in the Association.

Section 3. Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, not less than ten (10) nor more than sixty (60) days in advance of any meeting. Notice shall be hand-delivered or sent by United States mail to the mailing address of each Unit or to any other mailing address designated in writing by the Unit Owner, or sent by electronic means, including electronic mail, to an electronic mailing address designated in writing by the Unit Owner. The notice of any meeting shall state the date, time and place of the meeting and the items on the agenda, including the general

nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer. In the case of a special meeting, the notice of meeting shall include a description of the matter or matters for which the meeting is called.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, thirty percent (30%) of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. The quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. The quorum requirement shall continue to be reduced by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted. If a meeting is adjourned to a different date, a new notice of meeting need not be given if the new date, time, and place is announced at the meeting before adjournment.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing, signed by the Unit Owner, and filed with the Secretary. An appointment in the form of an electronic record that bears the Member's electronic signature and that may be directly reproduced in paper form by an automated process shall be deemed a valid appointment form. A proxy is void if it is not dated. A proxy terminates eleven (11) months after its date unless it specifies a shorter term. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Unit.

Section 6. Membership and Voting Rights. Membership in the Association shall be limited to the Owners, and every Owner of a Unit shall automatically be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from Unit ownership. Members shall be entitled to one (1) vote for each Unit owned. When more than one Person holds such interest in any Unit, the vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit, and no fractional vote may be cast with respect to any Unit.

Section 7. Electronic Communications and Electronic Voting.

The use of electronic transactions and transmissions by the Members or the Board is authorized in lieu of other forms of communication to the fullest extent allowed by North Carolina law, including without limitation, the North Carolina Condominium Act, Nonprofit Corporation Act and Article 40 of Chapter 66 of the North Carolina General Statutes. Unless otherwise prohibited by law, the Board may

adopt a web-based or other electronic based method of voting which allows owners to cast votes electronically. Any electronic voting system approved by the Board may be used in conjunction with, but not in lieu of, regular, or special meetings at which persons may still cast their votes in person or by proxy. If electronic voting is to be utilized, the Board must clearly identify in the meeting notice that electronic voting will be available, the method by which the Owner can access the voting option and cast the Owner's vote, and the date and time by which the electronic voting option will close. For purposes of determining quorum, any votes cast electronically will count towards determining whether a quorum was present.

#### **ARTICLE IV**

##### **BOARD OF DIRECTORS; SERVICE; TERM OF OFFICE**

Section 1. Number. The affairs of this Association shall be managed by a Board of three (3) directors who shall be Members of the Association.

Section 2. Term of Office. Directors elected by the Members shall serve for a term of two (2) years. The members of the Board of Directors shall take office upon election and shall hold office until their respective successors shall have been elected by the Association.

Section 3. Removal. A director may be removed from the Board (i) with or without cause, by a majority vote of all persons present and entitled to vote at any meeting of the Owners at which a quorum is present or (ii) by a majority of the Board in the event that director shall be absent from three (3) consecutive meetings of the Board of Directors. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting if the action is taken by all members of the Board. The action shall be evidenced by one or more written consents signed by each director describing the action taken, which are to be included in the minutes or filed with the corporate records. Such consents may be in electronic form and delivered by electronic means. Any action so approved shall have the same effect as though taken at a meeting of the directors.

Section 6. Participation in Meetings. Members of the Board or of any committee that the Board appoints may participate in a meeting of the Board or committee by conference telephone, video conference, or similar method of

communication, provided all persons participating in the meeting can hear each other simultaneously. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

## ARTICLE V NOMINATION AND ELECTION OF DIRECTORS

Section 1. Nomination. Nomination for election to the Board of Directors may be made by any Member of the Association in advance of the meeting at which election is to take place. Nominations may also be made from the floor at the annual meeting.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of these Bylaws and the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted. In the event the nominations for directors do not exceed the vacancies to be filled, the slate of directors may be elected by acclamation by a show of hands or voice vote.

## ARTICLE VI MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at least quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said 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.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two directors, after not less than three (3) days' notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have all powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the

Declaration, the Articles of Incorporation, these Bylaws, and otherwise by law, including, but not limited to, the power to:

(a) establish reasonable rules and regulations concerning the use of the Common Elements and the personal conduct of the Members and their guests thereon, as well as rules and regulations concerning use of the Units. Copies of such rules and regulations and amendments thereto shall be furnished by the Board of Directors to all Members prior to the rule's effective date. Such regulations shall be binding upon the Members, their families, tenants, guests, invitees, and agents until and unless such regulation, rule, or requirement shall be specifically overruled, cancelled, or modified by the Board;

(b) impose reasonable monetary fines not to exceed one hundred dollars (\$100.00) per day per violation, or the maximum amount allowed by law, for a violation of the Declaration, these Bylaws or the rules and regulations of the Association. No such monetary fine shall be imposed except following a hearing before the Board of Directors, which shall accord to the party charged with the violation notice of the charge, opportunity to be heard and to present evidence;

(c) make or contract for the making of capital improvements upon the Common Elements;

(d) enforce the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by the Board and bring any proceedings which may be instituted on behalf of or against the Owners concerning the Association or the Declaration;

(e) suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days, for an infraction of for violation of the Declaration, these Bylaws, or the rules and regulations of the Association;

(f) suspend the community privileges (including use of recreational facilities, if any) of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days, for an infraction of for violation of the Declaration, these Bylaws, or the rules and regulations of the Association;

(g) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(h) exercise for the Association all powers, duties and authority vested in or delegated to the Association by virtue of the North Carolina Condominium Act, Chapter 47C of the North Carolina General Statutes; the Nonprofit Corporation Act, Chapter 55A of the North Carolina General Statutes; and by virtue of any other applicable statute;

(i) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive meetings of the Board of Directors; and

(j) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

Section 2. Duties. It shall be the duty of the Board of Directors to, without limitation:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a summary thereof to the Members at the annual meeting of the Members, or at any special meeting, when such summary is specifically requested in writing by one-fourth (1/4) of the Members who are entitled to vote;

(b) supervise all officers, agents, and employees of the Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration or by statute, levy and collect assessments;

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) cause the Common Elements to be maintained; and

(f) pay all ad valorem taxes and public assessments relating to the Common Elements.

## ARTICLE VIII OFFICERS

Section 1. Enumeration of Offices. The officers of this Association shall be a president, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create. All officers must be Members of the Association.

Section 2. Election of Officers; Term. The officers of the Association shall be elected annually by the Board. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members. Each officer shall hold office for one (1) year unless he/she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 3. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time determine.

Section 4. Resignation and Removal. Any officer may be removed from office with or without cause by a majority of the Board. Any officer may resign at any time giving written notice to the Board, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6. Multiple Offices. The offices of president and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 7. Duties. The duties of the officers are as follows:

(a) President. The President shall preside at all meetings of the Board of Directors and the Association; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; shall prepare, execute, certify and record amendments to the Declaration in accordance with the amendment provisions set forth therein; and shall co-sign all checks exceeding \$5,000.00 and promissory notes.

(b) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual compilation, audit or review of the Association books to be made by an independent public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

Section 9. Management Company. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or ultimate responsibility for those duties set out in Article VII, Section 2.

## ARTICLE IX INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Association shall indemnify any director or officer against liabilities and reasonable litigation expenses, including attorney's fees, incurred by him/her in connection with any action, suit or proceeding in which he/she is made or is threatened to be made a party by reason of being or having been such director or officer, except in relation to matters as to which he/she shall be adjudged in such action, suit or proceeding to have acted in bad faith or outside the scope of his/her duties as a director, or to have been liable or guilty by reason of willful misconduct in the performance of duty.

## ARTICLE X COMMITTEES

The Board of Directors may appoint such committees as are authorized in the Declaration or as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. Such committees may include, but are not limited to, a Nominating Committee and an Architectural Review Committee.

## **ARTICLE XI BOOKS AND RECORDS**

The books and records of the Association shall be subject to inspection by any Member in accordance with Chapter 55A of the North Carolina General Statutes. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost. Such documents shall also be made available to lenders, holders, insurers, and guarantors of any first mortgages or deed of trust on a Unit.

## **ARTICLE XII AMENDMENTS AND CONFLICTS**

Section 1. These Bylaws may be amended at a regular or special meeting of the Members at which a quorum is present by two-thirds of the votes cast or a majority of the votes entitled to be cast on the amendment, whichever is less.

Section 2. In the case of any conflicts, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and these Bylaws, in that order, shall prevail.

## **ARTICLE XIII MISCELLANEOUS**

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.