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DECLARATION OF CONDOMINIUM

for

SKYLOFT ASHEVILLE CONDOMINIUM

Prepared by and return to:
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Asheville, NC 28802

STATE OF NORTH CAROLINA
COUNTY OF BUNCOMBE

DECLARATION OF CONDOMINIUM
FOR SKYLOFT ASHEVILLE CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM ("Declaration") is made this 3rd day of October, 2007, by SKYLOFT ASHEVILLE, LLC, a North Carolina limited liability company ("Declarant"), pursuant to the provisions of Chapter 47C of the North Carolina General Statutes, entitled the "North Carolina Condominium Act."

BACKGROUND STATEMENT

Declarant is the owner of a certain parcel of real estate located in the City of Asheville, Buncombe County, North Carolina ("Land"), as more particularly described on **Exhibit A** attached hereto and incorporated herein by reference. Declarant desires to submit the Land and the improvements located thereon (collectively, the "Property") to the terms and provisions of the North Carolina Condominium Act ("Condominium Act").

In addition, Declarant has deemed it desirable to create an incorporated owners association which will be responsible for: maintaining and administering the common areas and facilities on the Property; administering and enforcing the covenants and restrictions created in this Declaration; levying, collecting and disbursing the assessments and charges created in this Declaration; collecting and holding replacement reserves as agent for the Unit Owners; and taking any steps or performing any acts deemed necessary or appropriate to preserve the values of condominium units within the Property and to promote the recreation, health, safety and welfare of the Owners. In order to accomplish the foregoing, Declarant is entering into this Declaration.

STATEMENT OF DECLARATION

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

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:

Association. "Association" shall mean and refer to the Skyloft Asheville Condominium Owners Association, Inc., a non-profit corporation organized and existing under the laws of the North Carolina Nonprofit Corporation Act pursuant to and in accordance with this Declaration, the Bylaws, and the Condominium Act.

Board of Directors. "Board of Directors" or "Board" shall mean and refer to the governing body from time to time of the Association as constituted in accordance with the Articles of Incorporation of the Association, the Bylaws and the Condominium Act.

Building or Buildings. "Building" or "Buildings" shall mean and refer to any or all of the three buildings located upon the Land.

Bylaws. "Bylaws" shall mean and refer to the bylaws of the Association, a copy of which is attached hereto as **Exhibit B** and incorporated herein by reference, and all amendments to such bylaws which may from time to time be adopted.

Common Elements. "Common Elements" shall mean all parts of the Property other than the Units. Each Unit Owner shall be the owner of an undivided interest as a tenant in common of the Common Elements, although the use and obligations with respect to certain Common Elements shall be restricted as set forth in this Declaration and in the Bylaws.

Common Element Interest. "Common Element Interest" shall mean the percentage assigned to each Unit by this Declaration, which establishes each Unit's: (a) appurtenant undivided ownership interest in the Common Elements; (b) liability for Common Expenses; and (c) interest in surplus funds of the Association.

Common Expenses. "Common Expenses" shall mean and include all lawful expenditures made or liabilities incurred by or on behalf of the Association, including all assessments for the creation and maintenance of reserves.

Condominium. "Condominium" shall mean and refer to Skyloft Asheville Condominium, as established by the submission of the Property to the terms of the Condominium Act by this Declaration.

Condominium Instruments. "Condominium Instruments" shall mean and refer to this Declaration, the Articles of Incorporation of the Association, the Bylaws, the Public Offering Statement, and the Rules and Regulations, and all attachments and exhibits thereto.

Declarant. "Declarant" shall mean and refer to Skyloft Asheville, LLC, a North Carolina limited liability company, its successors, or any party to which it assigns its rights as Declarant under this Declaration.

Declarant Control Period. "Declarant Control Period" shall mean and refer to the period prior to the earliest of: (i) 120 days after the conveyance of Units, including those reserved under the Declarant Development Rights, to which seventy-five percent (75%) of the total Common Element Interests are assigned to Unit Owners other than the Declarant; (ii) two years after the Declarant has ceased to offer Units for sale in the ordinary course of business; or (iii) two years after any development right to add new units was last exercised by the Declarant; or (iv) the date specified by the Declarant in a notice to the Association that the Declarant Control Period is to terminate on that date.

Declaration. "Declaration" shall mean and refer to this Declaration of Condominium, as it may be amended from time to time.

Land. "Land" shall mean and refer to the real property subject to this Declaration, exclusive of any improvements located thereon or incorporated therein, which is more particularly described on **Exhibit A** attached hereto.

Limited Common Elements. "Limited Common Elements" shall mean those parts of the Common Elements which are Limited Common Elements within the meaning of the Condominium Act and which are reserved for the exclusive use of one or more, but less than all, of the Units and the Unit Owners. The Limited Common Elements existing at the time of the recordation of this Declaration are described

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herein, but shall also consist of any other portions of the Condominium which serve and benefit less than all of the Units.

Limited Common Expenses. "Limited Common Expenses" shall mean expenses separately assessed against one or more but less than all of the Units. Except where the context requires otherwise, Common Expenses shall include Limited Common Expenses.

Majority Vote. "Majority Vote" shall mean a simple majority [more than fifty percent (50%)] of the votes actually cast in person or by proxy at a duly called and held meeting at which a quorum is present, with the allocation of votes among Owners in accordance with Article V Paragraph 3.

Managing Agent. "Managing Agent" shall mean a person employed by the Association to perform obligations, duties and services relating to the management and maintenance of the Property and the maintenance of reserve funds in compliance with the provisions of this Declaration and the Bylaws.

Member. "Member" shall mean and refer to any Unit Owner.

Mortgage. "Mortgage" shall mean and refer to a mortgage or deed of trust constituting a lien on a Unit.

Mortgagee. "Mortgagee" or "Eligible Mortgage Holder" means a lender holding, insuring or guaranteeing a first Mortgage or first deed of trust ("First Mortgage") encumbering a unit in the Condominium, which has notified the Association of its status, has requested all rights under the Condominium Instruments, and has submitted a written request that the Association notify them on any proposed action requiring the consent of a specified percentage of Eligible Mortgage Holders.

Officer. "Officer" shall mean any person holding office pursuant to the Bylaws, but shall not mean members of the Board of Directors, unless such directors are also officers pursuant to the Bylaws.

Owner. "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, or holding title to any Unit merely as security for the payment or performance of a debt or obligation.

Person. "Person" shall mean an individual, partnership, joint venture, association, limited liability company, corporation, trust or any other legal entity.

Plans. "Plans" shall mean and refer to the plans and specifications of the Building and Property prepared by Red House Architecture, Inc., and recorded under the name of the Condominium in the Unit Ownership File in the Office of the Register of Deeds of Buncombe County, in Condominium File No. 940-943.

Plat. "Plat" shall mean the survey prepared by Brooks & Medlock Engineering, PLLC of the Land and Building as recorded in Plat Book 133, at Page 71, of the Buncombe County, N. C. Register of Deeds Office.

Property. "Property" shall mean and refer to the Land, the Building and all other improvements and structures located on the Land; all easements, rights and appurtenances belonging or appertaining to the Land; and all items of personal property intended for common use in connection therewith.

Replacement Reserves. "Replacement Reserves" shall mean those Common Expense assessments collected and held by the Association, as agent for the Unit Owners, for the purposes of defraying projected future replacement costs of Common Elements. Said amounts are held by the Association for

the convenience of the Unit Owners, can only be expended at the direction of the Association, and, in the event of dissolution of the Association, are returnable to the then Unit Owners in proportion to their respective Common Element Interests and in accordance with a valid dissolution plan.

Rules. "Rules" or "Condominium Rules" shall mean the initial Condominium rules and regulations attached hereto as **Exhibit C** and made a part hereof and those other rules and regulations adopted from time to time by the Board of Directors that are deemed necessary for the enjoyment of the Condominium, provided they are not in conflict with this Declaration and the Bylaws.

Unit. "Unit" shall mean and refer to a portion of the Property, as more particularly described in Article IV of this Declaration that is the subject of individual ownership in fee simple by an Owner.

Unit Owners. "Unit Owners" shall mean all Persons who own a Unit in the Condominium.

In addition, the definitions set forth in N.C.G.S. §47C-1-103 are incorporated in this Declaration by reference, and the terms defined therein shall have the meanings set forth therein when used in the Condominium Instruments, 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.

II. DESIGNATION OF CONDOMINIUM

The Land on which the Building and other improvements are located is located entirely in the City of Asheville, Buncombe County, North Carolina, is more particularly described on **Exhibit A** attached hereto. The Land is hereby subjected to the terms of the Condominium Act by this Declaration. The name of the Condominium is Skyloft Asheville Condominium.

III. DESCRIPTION OF BUILDING

The location and dimensions of the Building are shown on the Plat and Plans. The Plat and the Plans contain certifications by Paul E. Sexton, a North Carolina registered land surveyor, and Robert M. Todd, a North Carolina licensed architect, that the Plat and Plans contain all the information required by N.C.G.S. §47C-2-109.

IV. DESCRIPTION OF UNITS

1. Units. The location of the Units within the Buildings and their dimensions are shown on the Plans. There are a total of six (6) Units in one (1) Building. All of the Units are residential units, meaning that they are restricted to residential use only. A list of the Units is shown in **Exhibit D** attached hereto and incorporated herein by reference.

2. Unit Boundaries.

The boundaries of each of the Units are as follows:

(a) Upper Boundary: The horizontal planes formed by the lowermost unfinished surfaces of the drywall ceilings extended to intersections with each other, and with the vertical boundaries.

(b) Lower Boundary: The unfinished horizontal plane of the top surface of the subfloor within the Unit.

(c) Vertical Boundaries: The vertical planes formed by the innermost unfinished surface of the drywall or plaster of all walls bounding the Unit, extended to intersections with each other, and with the upper and lower boundaries.

As provided in N.C.G.S. §47C-2-102, if any chute, flue, duct, wire, HVAC equipment, pipe for water or sewer, conduit, bearing wall, 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 shall be a Limited Common Element allocated to that Unit, and any portion thereof serving more than one Unit, or any portion of the Common Elements or Limited Common Elements, shall be a Common Element or Limited Common Element (as applicable), allocated to the Unit or Units which it serves.

V. COMMON ELEMENTS

1. Common Elements. The Common Elements shall be composed of all portions of the Condominium other than those items which are shown on the Plans or designated in this Declaration as Units or Limited Common Elements. The Common Elements shall include, without limitation:

(a) The Land, including but not limited to the unassigned parking spaces located thereon, sidewalks and steps;

(b) All structural elements of the Buildings, including without limitation, the roof structure, foundation, exterior walls (not including windows and doors), load bearing walls, and all other structural elements;

(c) All water lines, electric lines, telecommunications lines, utility lines, and sewer lines located outside public street rights of way and utility easements, serving more than one Unit and not owned by the providing utility;

(d) Central components of the heating, ventilation, and air conditioning system, which serve more than one Unit, including, without limitation, the cooling tower, boiler, pump, and HVAC system water lines; and

(e) The fire prevention sprinkler system and all components thereof.

2. Limited Common Elements. The Limited Common Elements shall be composed of those items shown on the Plans or designated in this Declaration as Limited Common Elements. The Limited Common Elements shall include, without limitation:

(a) The designated parking spaces in the basement or covered parking lots, one of which will be assigned to each of the Units;

(b) The HVAC equipment for each Unit;

(c) Decks adjacent to a Unit as shown on the Plans; and

(d) The elevator, if any, and stairways within the Building as shown on the Plans.

3. Undivided Interests in Common Elements, Share of Liability and Votes. The Interest in Common Elements, Share of Liability for Common Expenses allocated to each Unit is as set forth in **Exhibit D** attached hereto. The Votes allocated to each Unit is one vote per Unit. Any conveyance,

encumbrance, judicial sale or other transfer (voluntary or involuntary) of an undivided interest in Common Elements will be void unless the Unit to which that interest is allocated is also transferred.

VI. THE ASSOCIATION

1. Organization of Association. A North Carolina non-profit corporation known and designated as Skyloft Asheville Condominium Owners Association, Inc. has been organized to provide for the administration of the Property. The Association shall administer the operation and maintenance of the Property and undertake and perform all acts and duties incident thereto in accordance with the terms of its Articles of Incorporation, the Bylaws, and the Condominium Act. Every Owner shall be required to be and shall automatically be and remain a Member of the Association by virtue of ownership of a Unit.

2. Powers; Lien for Assessment. In the administration of the operation and management of the Property, the Association shall have and it is hereby granted the authority and power to enforce the provisions of this Declaration, to levy and collect assessments in the manner provided in the Bylaws, to file liens for unpaid assessments, and to adopt, promulgate and enforce such rules and regulations governing the use of the Units and Common Elements as the Board of Directors may deem to be in the best interest of the Association in accordance with the Bylaws.

VII. UNITS SUBJECT TO CONDOMINIUM INSTRUMENTS

All present and future Owners, tenants, and occupants of the Units, including the Declarant, shall be subject to and shall comply with the provisions of this Declaration, the Bylaws, and any rules and regulations as may be adopted in accordance with the Bylaws, 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 this Declaration, the Bylaws and any Rules and Regulations which may be adopted are accepted and ratified by such Owner, tenant or occupant, and an agreement that such provisions shall be deemed and taken to be covenants running with the Land 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.

VIII. AMENDMENT TO DECLARATION AND DECLARANT'S RIGHTS

1. Amendment to and Supplement to Declaration. Except as is otherwise specifically authorized herein or in the Condominium Act, this Declaration may only be amended by: (i) a vote of at least sixty-seven percent (67%) of total eligible votes of the Owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Bylaws; and (ii) the consent of at least fifty one percent (51%) of the Eligible Mortgage Holders. Except as otherwise provided in this Declaration or under Sections 2 and 3 below, 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, changes the use to which any Unit is restricted, or modifies the terms of Article XII Section 13, shall require the unanimous approval of all of the Owners and the approval of 51% of the Eligible Mortgage Holders. Furthermore, during the Declarant Control Period, the Declarant reserves the right to unilaterally amend the Instruments (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with, or remove any conflict or inconsistency with, the provisions of any applicable governmental statute, rule, regulation, including without limitation, the provisions of the Condominium Act, or judicial determination which shall be in conflict therewith, or (ii) if such amendment is required by the governmental statutes, laws, rules or regulations applicable to or promulgated by a governmental lender or purchaser of mortgage loans, or (iii) if such amendment is necessary under the Declarant's Rights referenced in Section 3 below. No amendment to this Declaration

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shall be effective until executed by the appropriate party or parties as set forth herein and recorded in the office of the Register of Deeds of Buncombe County, North Carolina.

2. Development Rights and Development Plan. The Declarant reserves the right, but not the obligation, to add to Skyloft Asheville Condominium that adjoining tract of real estate located in Buncombe County, North Carolina, described on **Exhibit E** attached hereto, in multiple phases ("Additional Phases"). Each Additional Phases shall be added to the Declaration by the recording of a Supplemental Declaration executed by the Declarant. The Declarant also reserves the right, but not the obligation, to create out of the Additional Phases a maximum of sixty-three (63) additional units of the condominium, together with additional common elements and limited common elements. The development rights described in this section must be exercised within five (5) years of the date of recording of this Declaration. The Declarant plans to construct seven (7) additional buildings in the Additional Phases, which shall be virtually identical in style, composition and construction to the Building as shown by the Plans, together with additional parking area to support the additional units. All improvements in the Additional Phases shall be substantially completed before added to the Condominium.

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

- (a) to complete all improvements shown on the Plans;
- (b) to maintain a single, one-room sales office and/or management office within the Condominium;
- (c) to maintain signs advertising the Condominium on the Common Elements;
- (d) to use easements through the Common Elements for the purpose of making improvements to the Property and to the real estate described on **Exhibit A**;
- (e) to amend this Declaration as necessary to exercise the development rights reserved pursuant to Section 2 above; and
- (f) to appoint or remove any officer or member of the Board of the Association, subject to the limitations stated in N.C.G.S. §47C-3-103(d) and (e), which are incorporated herein.

IX. TERMINATION

In the case of substantial destruction or condemnation, the Condominium may be terminated and the Property removed from the provisions of the Condominium Act by the agreement of at least 67% of the Owners of Units and at least 51% of Eligible Mortgage Holders. Each Owner hereby grants an irrevocable power of attorney to the Association to represent such Owner in such proceedings, negotiations, settlements and agreements. Any proceeds from a settlement must be payable to the Association, for the benefit of the Owners and their Mortgagees. Termination of the Condominium for reasons other than substantial destruction or condemnation of the Property must be agreed to by all of the Owners of Units and at least 67% of the Eligible Mortgage Holders, as evidenced by execution of a termination agreement. In case of termination, the liens of the Mortgagees shall be transferred to the percentage of undivided interest of the Owners who shall own the Property as tenants in common following such termination, which shall be the percentage of undivided interest of such Owner in the Common Elements.

X. RIGHTS RESERVED TO MORTGAGEES AND UNIT OWNERS

1. Rights of Mortgagees and Unit Owners to Examine Books and Records. Any Mortgagee, and any insurer or guarantor of a loan secured by a Mortgage and any Unit Owner, 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 Instruments, as amended, and the financial statements of the Association. 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.

2. Mortgagee's Rights to Notice. If any Mortgagee, or any guarantor or insurer of a loan secured by a Mortgage, has served written notice of its desire to receive notices upon the Association by certified mail, return receipt requested, addressed to the Association and sent to its address, identifying the Unit on which it holds, guarantees, or insures a Mortgage, which notice designates the place to which notices are to be given by the Association to such party, then such party 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 Instruments by any Owner of a Unit encumbered by a Mortgage held, insured, or guaranteed by such Mortgagee.

(b) Any casualty loss to or condemnation of either a material portion of the Condominium or the Common Elements or 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 of Directors, or the Owners, which under the terms of the Condominium Instruments requires the consent of a specified percentage of the Mortgagees.

The failure of any Mortgagee to respond within thirty (30) days to any written request of the Association, sent by registered or certified mail, return receipt requested, for approval of an amendment to the Condominium Instruments whenever Mortgagee approval is required shall constitute an approval by that Mortgagee of the proposed amendment.

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

XI. CONDEMNATION

In the event that all or part of the Condominium shall be taken by any authority having the power of eminent domain, the allocation of the award for such condemnation shall be handled as follows:

1. The holder of any First Mortgage on a Condominium Unit will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provisions of this Declaration or of any other Condominium Instrument establishing the Condominium will entitle the Owner or other person to priority over any Mortgage with respect to the distribution of the proceeds of any award or settlement relating to such Condominium Unit.

2. Each Owner hereby grants an irrevocable power of attorney to the Association to represent such Owner in any and all condemnation proceedings, negotiations, settlements, and agreements with the condemning authority. The award for such taking shall be payable to the Association for the use and benefit of the Owners and their respective Mortgagees as their interests may appear and shall be distributed by the Board of Directors.

XII. OPERATION OF THE CONDOMINIUM

1. Payment of Association Expenses. Each Unit Owner shall pay the Common Expenses assessed by the Association. No Unit Owner may be exempted from liability for the assessment for such Common Expenses by reason of waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Unit. A Unit Owner shall not be liable for the payment of any part of such Common Expenses assessed against the Unit subsequent to the date of recordation of a conveyance by such Unit Owner in fee of such Unit. Prior to or at the time of any such conveyance, all liens, unpaid charges and assessments shall be paid in full and discharged. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all such unpaid assessments up to the time of such recordation, without prejudice to the purchaser's right to recover from the selling Unit Owner amounts paid by the purchaser therefore; provided, however, that any such purchaser shall be entitled to a statement setting forth the amount of the unpaid assessments against the selling Unit Owner within ten (10) days following a written request therefore to the Board of Directors or Managing Agent, and such purchaser shall not be liable for, nor shall the Unit conveyed be subject to, a lien for any unpaid assessments in excess of the amount therein set forth.

2. Collection of Assessments. The Board of Directors, or the Managing Agent at the request of the Board of Directors, shall take prompt action to collect any assessments for Common Expenses due from any Unit Owner which remains unpaid for more than thirty (30) days from the due date thereof. If a Unit Owner is delinquent for more than sixty (60) days, the Board of Directors may file a lien against the Unit. Any assessment, or installment thereof, not paid within fifteen (15) days after due shall accrue a late charge in the amount of Twenty Dollars (\$20.00) or such other amount as may be established from time to time by the Board of Directors, and interest at a rate not to exceed the maximum rate permitted by law may be imposed in the discretion of the Board of Directors. The actual costs of collection shall also be assessed against the Unit.

3. Priority of Lien. The lien for Assessments, once perfected, shall be prior to all other liens and encumbrances except only (a) the lien for real estate taxes on that Condominium Unit, and (b) the lien of a First Mortgage recorded prior to the perfection of said lien for Assessment. Except as provided herein, the sale or transfer of any Condominium Unit shall not affect the Assessment lien. However, in the event any First Mortgage or other purchaser shall acquire title to any Condominium Unit as a result of foreclosure of a First Mortgage, such purchaser shall not be liable for, nor shall such Condominium Unit be subject to a lien for any Assessment which became due prior to acquisition of title to such Unit by such purchaser.

4. Statement of Assessments. Within ten (10) days from the receipt of a written request therefore, the Board of Directors shall provide any Unit Owner, proposed purchaser or Mortgagee with a written statement of all unpaid assessments for Common Expenses due from such Unit Owner. The Board of Directors may impose a reasonable charge for the preparation of such statement to cover the cost of preparation.

5. Maintenance, Repair, Replacement and Other Common Expenses.

(a) By the Association. The Association shall be responsible for the proper maintenance, repair and replacement of all of the Common Elements as defined herein or as shown on the Condominium Plat and Plans, and any other portion of the Condominium required to be maintained by the Association pursuant to the Condominium Instruments. The cost of such work on the Common Elements shall be charged to all Unit Owners as a Common Expense and the cost of such work on the Limited Common Elements shall be charged to Unit Owners benefited. Alternatively, if the Board of Directors determines that such maintenance, repair or replacement was necessitated by the negligence, misuse, intentional act, or neglect of a Unit Owner, the Association may undertake such repair, maintenance, or replacement and assess the responsible Unit Owner for all costs related thereto.

(b) By the Unit Owner.

(1) Except for the portions of the Owner's Unit required to be maintained, repaired and replaced by the Association, each Unit Owner shall keep the Unit and its equipment, appliances and appurtenances in good order, condition and repair and in a clean and sanitary condition. All minor repairs to the Units, except those covered under any warranty provided by the Declarant, shall be the sole responsibility of each Unit Owner. Each Unit Owner shall perform this responsibility in such manner as shall not unreasonably disturb or interfere with the other Unit Owners. Each Unit Owner shall promptly report to the Board of Directors or the Managing Agent any defect or need for repairs for which the Association is responsible.

(2) The Owner of any Unit to which a Limited Common Element is appurtenant shall perform the normal maintenance for such respective Limited Common Element, including keeping it in a clean and sanitary condition, free and clear of snow, ice and any accumulation of water and shall also make all repairs thereto caused or permitted by such Unit Owner's negligence, misuse or neglect. All structural repair or replacement or repairs to utility lines, conduits, pipes, ducts, flues, or any other fixture serving a Unit, but not located in the Unit, shall be made by the Association as provided in the Bylaws.

(c) Manner of Repair and Replacement. All repairs and replacements shall be substantially similar to the original construction and installation and shall be of first-class quality.

6. Additions, Alterations, Renovations or Improvements by the Board of Directors. Whenever, in the judgment of the Board of Directors, the Common Elements shall require additions, alterations, renovations or improvements costing in excess of five percent (5%) of the Association's annual budget during the preceding fiscal year, the making of such additions, alterations, renovations or improvements shall require a Majority Vote of the Unit Owners. If approved, the Board of Directors shall assess the cost thereof as a Common Expense. Any additions, alterations, renovations or improvements costing five percent (5%) of the Association's annual budget or less during the preceding fiscal year may be made by the Board of Directors without approval of the Unit Owners and the cost thereof shall constitute a Common Expense. Notwithstanding the foregoing, if, in the opinion of the Board of Directors, such additions, alterations, renovations or improvements are for the benefit of less than all the Unit Owners, such benefited Unit Owners shall be assessed therefore in the proportion established by Article XII, Paragraph 13.

7. Additions, Alterations, Renovations or Improvements by the Members.

(a) Common Elements. No Owner shall paint, decorate, landscape, adorn, construct anything or remove anything from, or alter the exterior of the Building, any Common Element, a Limited Common Element, the exterior of the Owner's Unit, including the exterior of any doors and windows, and any window or door glass visible to the outside, without the prior written consent of the Board of

Directors. Notwithstanding the foregoing, any Owner may paint the inward-facing surfaces of the Unit's doors and window frames. However, the Declarant shall have the right to make such alterations as to any Unit owned by the Declarant without the consent of the Board of Directors during the Declarant Control Period.

(b) Units. An Owner may make any improvements or alterations to his Unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the Condominium, or cause a violation of any law or regulation so long as prior written approval is first obtained from the Association. Subject to prior written approval by the Association, an Owner may, after acquiring an adjoining Unit, remove or alter any intervening partition or create apertures therein, even if the partition is a Common Element, if those acts do not impair structural integrity or mechanical systems, lessen the support of any portion of the Condominium, or cause a violation of any law or regulation. Any approved removal of partitions or creation of apertures under this paragraph is not an alteration of a Unit's boundaries.

8. Restrictions and Rules and Regulations.

(a) Restrictions. The Common Elements and Units shall be restricted as follows:

(1) Nothing shall be done or kept in the Common Elements or in any Unit which will increase the rate of insurance for the Property or any part thereof without the prior written consent of the Board of Directors. Any such increase in the rate of insurance may be assessed against the Member causing such increase. No Member shall permit anything to be done or kept in such Common Elements or Units which will result in the cancellation of insurance on the Property or any part thereof or which would be in violation of any law, regulation or administrative ruling. No waste will be allowed or committed on the Common Elements or within the Units.

(2) No Unit Owner may carry on any practice, or permit any practice to be carried on, which would unreasonably interfere with the quiet enjoyment by the Owners of other Units. Furthermore, no improper, offensive, obnoxious, or unlawful use shall be made of the Building(s), the Common Elements or any part thereof or any Unit, and all laws, requirements, zoning ordinances and regulations of all governmental agencies having jurisdiction thereof shall be observed. No Owner or tenant shall overload the Building(s) electrical, structural, or plumbing systems.

(3) No Owner shall obstruct any of the Common Elements nor shall any Owner place or cause or permit anything to be placed on or in any of the Common Elements unless allowed by the Board or this Declaration. Nothing shall be altered or constructed in or removed from the Common Elements except with the prior written consent of the Board of Directors.

(4) The Common Elements shall be used for the furnishing of the services and facilities for which the same are reasonably suited. The walk-ways, public halls and stairways shall be used for no purpose other than for normal transit. Balconies and patios may be used as a location for outdoor furniture and container gardening but grills can not be placed or used on any balcony or patio.

(5) Except as provided in this Declaration, no Unit shall be used for other than housing and the related common purposes incidental to residential use and occupancy, including the limited use of a Unit as a home office, but such use shall not involve regular or frequent visits by clients, customers, associates, patients, or delivery personnel.

(6) Except for such signs as may be posted by the Declarant for promotional or marketing purposes or by the Association, no signs of any character shall be erected, posted or

displayed upon, in, from or about the Common Elements without the prior written approval of the Board of Directors.

(7) No radio, television, or satellite dish or aerial shall be attached to or hung from any Common Element without the prior written approval of the Declarant, if within the Declarant's Control Period, and the Board of Directors.

(8) No Unit shall be subjected to or used for any timesharing, cooperative, licensing or other arrangement that would entail weekly, monthly, or any other type of revolving or periodic occupancy by multiple residential members, cooperators, licensees, or timesharing participants.

(b) Additional Restrictions. The Declarant shall have the right to impose additional restrictions on certain Units which additional restrictions will be set forth in the deed(s) of conveyance for said Unit(s).

(c) Rules and Regulations. The Property shall be used in compliance with the Rules and Regulations which may be promulgated by the Association, a copy of which is attached hereto as **Exhibit C**. Copies of the Rules and Regulations shall be furnished by the Association to each Owner. Changes to the Rules and Regulations shall be conspicuously posted prior to the time when the same shall become effective and copies thereof shall be furnished to each Owner.

9. Leasing of Units. No Unit shall be used or occupied for commercial transient, hotel or motel purposes. In addition, the following restrictions apply to the leasing of a Unit: (i) no Unit may be leased or subleased without a written lease or sublease; (ii) no Unit may be leased or subleased for an initial term of less than six (6) months; (iii) each lease or sublease shall lease an entire Unit only; (iv) no more than thirty percent (30%) of the total number of the existing Units can be leased at any time; (v) the rights of any lessee or sublessee of any Unit shall be subject to, and each such lessee or sublessee is bound by, the covenants, conditions and restrictions contained in the Condominium Instruments; provided, however, that lessees or sublessees are not directly liable to pay any assessments on behalf of the Owner of a Unit in which they reside; and (vi) a copy of all leases or subleases must be approved by the Association prior to execution thereof, which approval shall not be unreasonably withheld if all of the other conditions set forth in this paragraph have been met. Notwithstanding anything to the contrary set forth herein, during the period of Declarant Control as defined in the Declaration, the Declarant (i) can lease any unsold Units on whatever terms and conditions it deems appropriate; and (ii) must approve any lease or sublease entered into in connection with any other Unit.

10. Sale of Units. Notwithstanding any provisions contained in this Declaration to the contrary, during the period of the initial sale of the Condominium Units by the Declarant, it shall be expressly permissible for Declarant, its contractors, agents, employees, assigns, and representatives to maintain and carry on, upon such portion of the Property and Condominium as Declarant may deem necessary, such facilities and activities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the completion and sale of the Condominium Units, including, but without limitation, business offices, signs, up to two (2) model Units, and sale offices.

11. Right of Access. By acceptance of the deed of conveyance of a Unit, each Owner thereby grants a right of access to the Unit, as provided by this Declaration, to the Board of Directors or the Managing Agent, or any other person authorized by the Board or the Managing Agent for the purpose of enabling the exercise and discharge of their respective powers and responsibilities, including without limitation making inspections, correcting any condition originating in the Unit or in a Common Element to which access is obtained through the Unit and threatening the Common Elements or another Unit, performing installations, improvements, alterations or repairs to the mechanical or electrical systems

which are part of the Common Elements and any other Common Elements located in the Unit or elsewhere in the Property; provided, however, that requests for entry are made in advance and that any such entry is at a time reasonably convenient to the Owner. In case of an emergency, such right of entry shall be immediate, whether or not the Owner is present. Each Owner shall provide a working copy of all keys to the Unit to the Association.

12. Water/Sewer Usage Charges. Water/sewer usage will be individually metered to the Units and paid to the Association. The Association shall read the meters and assess each Unit for the usage, which assessment shall be immediately due and payable to the Association for prompt payment to the local water authority. Any water/sewer usage for Common Elements shall be a Common Expense and paid by the Association.

13. Allocation of Expenses. Common Expenses will be allocated to Unit Owners based on their Common Element Interests as set forth in **Exhibit D**. Limited Common Expenses, unless otherwise specifically allocated in this Declaration, will be allocated to the affected Unit(s) according to the relative percentages established in **Exhibit D**.

14. Encroachments. If any portion of the Common Elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the Common Elements, as a result of the construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement of any portion of the Condominium, an easement for the encroachment and for the maintenance, repair, and replacement thereof shall exist so long as the encroachment exists. In the event that the Building, any Unit, any adjoining Unit, or any adjoining portion of the Common Elements shall be partially or totally damaged or destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then be repaired or reconstructed, encroachments of portions of the Common Elements upon any Unit, or of any Unit upon any other Unit or upon any portion of the Common Elements, due to such repair or reconstruction, shall be permitted, and easements for such encroachments and the maintenance, repair and replacement thereof shall exist. Pursuant to N.C.G.S. §47C-2-114, this easement is intended to apply to minor unintentional encroachments that are reasonable in extent and do not deprive another of a substantial property right or use.

15. Easements. The Association, each Unit Owner, and the Declarant shall have an easement and right of access across all Common Elements for the purpose of ingress, egress and regress and of exercising and discharging of their respective powers and responsibilities, including without limitation making inspections, performing installations, improvements, alterations or repairs to any part of the Common Elements and including the right to install and maintain or repair any electric or telecommunications line and attached equipment, support structures, cabling, and conduit serving any Unit or Common Element. During the Declarant Control Period, the Declarant shall also have the right to grant easements over the Common Elements for the installation or repair of such utilities or for the completion or repair of improvements. Any party exercising the right and easement herein contained shall bear any costs reasonably necessary to expeditiously return the Common Elements to at least equivalent condition to that which existed prior to the exercise of its rights hereinstated, and shall not, in the exercise of said rights, violate or cause the violation of any provision of this Declaration.

16. Insurance. The Association shall obtain and maintain at all times (a) insurance for all of the insurable improvements on the Property (with the exception of improvements and betterments made by the respective Owners or Occupants) against loss or damage by fire or other hazards, including extended coverage, vandalism, malicious mischief, debris removal, cost of demolition, windstorm, and water damage, in an amount consonant with full replacement value of such insurable improvements, (b) fidelity coverage against dishonest acts on the part of its Board of Directors, Officers, employees, agents and volunteers responsible for handling funds belonging to or administered by the Association in an

amount as the Board may determine, (c) comprehensive public liability insurance, in amounts established by the Board of Directors from time to time, but in no event shall such amounts be less than One Million Dollars (\$1,000,000.00) for single limit coverage, and (d) such other types of insurance either required by applicable governmental authority or law or authorized by the Board of Directors from time to time. When any policy of insurance has been obtained by or on behalf of the Association, written notice of the obtainments thereof, and of any subsequent changes therein or termination thereof shall be promptly furnished to each Owner by the Officer required to send notices of meetings of the Association.

XIII. ENFORCEMENT; MEDIATION

1. Actions by Owners. If the Association, Board of Directors, or any Owner shall fail to perform any obligation imposed upon them by the Condominium Instruments, and such failure shall cause an immediate risk of substantial economic loss to any Owner, or shall significantly jeopardize the physical condition of the Property, or any part thereof, then any Owner shall have the right to perform such obligation and to exercise any authority otherwise delegated to the Association, or the Board, or any other Owner, necessary to perform such obligation. If an obligation so performed was the obligation of an Owner, the reasonable cost of performing such obligation shall be immediately due and payable from the Owner who has failed to perform the obligation to the Owner who performed it. If an obligation so performed was the obligation of the Association or the Board of Directors, the reasonable cost of performing such obligation shall be a Common Expense.

2. Mediation. Each Owner, by accepting a deed to a Unit, agrees that any Owner or the Association may require that any unresolved matter among the Owners or before the Board of Directors or before the Association be submitted to non-binding mediation, prior to pursuing any other remedies. The fees and expenses of mediation shall be paid by the participants and shall not be a Common Expense unless a majority of the Owners of all Units so agree in writing.

3. Civil Suit. Any Owner may also bring a civil action against any other Owner, or against the Association, or against the Board of Directors, or any one or more of them, to enforce any obligation imposed hereunder.

XIV. CONSENT OF MORTGAGEE

The Land and the Building are currently encumbered by the lien of a Deed of Trust dated February 23, 2007, and recorded in Book 4365 at Page 276, Buncombe County Registry, executed and delivered by Declarant to MTNBK, LTD as Trustee for Carolina First Bank, and a second Deed of Trust dated March 1, 2007, and recorded in Book 4368 at Page 664, Buncombe County Registry, executed and delivered by Declarant to Robert W. Oast, Jr., as Trustee for City of Asheville. A Consent of Beneficiary executed by both the current Trustees and the Beneficiaries of said Deeds of Trust, consenting to the execution and recordation of this Declaration, will be recorded.

XV. MISCELLANEOUS PROVISIONS

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.

2. Waiver. No provisions contained in this 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.

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.

4. Law Controlling. This Declaration and the other Condominium Instruments shall be construed and controlled by and under the laws of the State of North Carolina.

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 Condominium Act. Specific language shall control over general language. 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.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the day and year first above written.

Skyloft Asheville, LLC.,
a North Carolina limited liability company

By Robert M. Farmer

Member/ Manger

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

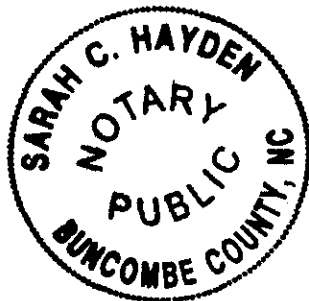
I, a Notary Public for Buncombe County and the State of North Carolina, do hereby certify that Robert M. Farmer, who is a Member/ Manager of Skyloft Asheville, LLC, a North Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and official seal, this the 3rd day of October, 2007.

Sarah C. Hayden
Notary Public
Print Name: Sarah C. Hayden

[Official Stamp or Seal]

My commission expires:
11-28-2009



R&S 565786-1

EXHIBIT A

LAND

Being all of that 0.66 acre parcel shown as "Phase 1" on a plat entitled "Property Survey for Skyloft Asheville, Phase 1, Skyloft Asheville Condominium" recorded in Plat Book 133 at Page 71, Buncombe County Registry, reference to which is hereby made for a more particular description of said parcel.

R&S 565786-1

EXHIBIT B

BYLAWS

ARTICLE I
GENERAL PROVISIONS

Section 1.1 Name. These are the Bylaws of the Skyloft Asheville Condominium Association, Inc., a North Carolina nonprofit corporation (the "Association").

Section 1.2 Office. The office of the Condominium, the Association, and the Board of Directors shall be located in Buncombe County, North Carolina, or at such other place as may be designated from time to time by the Board of Directors.

Section 1.3 Definitions. For purposes of these Bylaws, terms specifically defined in the Declaration of Condominium for Skyloft Asheville Condominium (the "Declaration") or the North Carolina Condominium Act, Chapter 47C, North Carolina General Statutes (the "Act") shall have the same meaning herein.

ARTICLE II
QUALIFICATIONS AND RESPONSIBILITIES
OF MEMBERS

Section 2.1 Composition of Association. Each Unit Owner shall be a Member of the Association and shall remain a Member until he ceases to be a Unit Owner. The Association shall have the responsibility of administering the Condominium, establishing the means and methods of collecting assessments and charges for Common Expenses, arranging for the management of the Association and Common Elements and performing all other acts that may be required or permitted to be performed by the Association by the Declaration and these Bylaws. The foregoing responsibilities shall be performed by the Board of Directors or Managing Agent.

Section 2.2 More Than One Owner. When there is more than one Unit Owner of a Unit, all such persons shall be collectively a Member of the Association.

Section 2.3 Registration. It shall be the duty of each Unit Owner to register his name and the number of his Unit with the Secretary of the Association.

Section 2.4 Prohibition of Assignment. The interests of a Member in the Association cannot be transferred or encumbered except as an appurtenance to his/her Unit.

ARTICLE III
MEETINGS AND VOTING

Section 3.1 Place of Meetings. Meetings of the Association shall be held in Asheville, North Carolina, at such place as may be designated by the Board of Directors in the notice of the meeting.

Section 3.2 Annual Meetings. The Members shall meet at least once each year as specified in the notice of such meeting given pursuant to Section 3.4. At each annual meeting the members shall appoint the Members of the Board of Directors ("Board" or "Directors") pursuant to Section 4.1 and may transact any other business properly coming before them.

Section 3.3 Special Meetings. Special meetings of the Association may be called at any time by the President or by the Board: (i) if so directed by resolution of the Board; or (ii) upon a petition signed and presented to the Secretary by Members owing not less than fifty-one percent (51%) of the aggregate Common Element Interests. The signatures on a petition requesting a special meeting shall be valid for a period of one hundred eighty (180) days after the date of the first such signature. Such resolution or petition must (i) specify the time and place at which the meeting is to be held, (ii) specify the date on which the meeting is to be held, (iii) specify the purposes for which the meeting is to be held, and (iv) be delivered to the Secretary. The notice of any special meeting shall state the time, place, and purpose thereof. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

Section 3.4 Notices of Meetings. Notice of all meetings of the Members, stating the time and place, and accompanied by a complete agenda thereof, shall be given by the President or Secretary to each Member (i) at least twenty-one (21) days but not more than fifty (50) days prior to such any annual or regularly scheduled meeting, and (ii) at least ten (10) days but not more than fifty (50) days prior to any special meeting. Such notice shall be in writing, and shall be hand delivered or sent by United States mail to the Members at the addresses of their respective Units and to other addresses as any Member may have designated to the Association.

Section 3.5 Quorum; Adjournment If No Quorum. A quorum shall consist of Members present, in person or by proxy, entitled to cast at least fifty percent (50%) of the total votes in the Association. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present.

Section 3.6 Votes.

(a) Voting at all meetings of the Association shall be on a one vote per Unit basis. Where the ownership of a Unit is in more than one (1) Person, the Person who shall be entitled to cast the vote of such Unit shall be the Person named in a certificate executed by all of the owners of such Unit and filed with the Secretary or, in the absence of such named Person from the meeting, the Person who shall be entitled to cast the vote of such Unit shall be the Person owning an interest in such Unit who is present. If more than one (1) Person owning such Unit is present, then such vote shall be cast only in accordance with their unanimous agreement. A fiduciary shall be entitled to cast a vote for a Unit owned in a fiduciary capacity. If a Member is not a natural person, the vote for such Unit may be cast by (i) any natural person having authority to execute deeds on behalf of such Person, pursuant to N.C.G.S. Chapter 47, or (ii) any other natural person designated by power of attorney for the natural person referred to in subsection (i) above. The natural person referred to in subsection (i) above shall be named in a certificate signed by an authorized officer of the non-natural person, and the natural person referred to in subsection (ii) above shall be named in a power of attorney signed by the natural person referred to in subsection (i) above. The aforesaid certificate and power of attorney shall be valid until revoked by a subsequent certificate or power of attorney similarly executed and filed.

(b) Except where a greater number is required by the Condominium Instruments, or where the consent of a certain percentage of Members or any percentage of Mortgagees is required pursuant to the Declaration or these Bylaws, a Majority Vote is required to adopt decisions at any meeting of the

Association. If the Declarant owns or holds title to one (1) or more Units, the Declarant shall have the right at any meeting of the Association to cast the votes to which such Unit(s) is entitled.

(c) No Member may vote at any meeting of the Association if payment by such member of any bona fide financial obligation to the Association is delinquent more than sixty (60) days after written notice has been given to such member and the amount necessary to bring the account current has not been paid at the time of such meeting or election.

Section 3.7 Manner of Casting Votes. Votes may be cast in person or by proxy. A proxy may be given to another Member of the Association, an Officer, the Declarant, the managing Agent, such Member's Mortgagee, or such Member's attorney. Proxies shall be duly executed in writing, shall be dated, shall be signed by a person having authority at the time of the execution thereof to execute deeds on behalf of that person, and must be filed with the Secretary. Such proxy shall be deemed revoked only upon actual receipt by the person presiding over the meeting of notice of revocation from any of the persons owning such Unit. Any proxy shall terminate automatically upon the final adjournment of the first meeting held on or after the date of that proxy, however such proxy shall remain valid for any meeting that is recessed for up to forty-eight (48) hours. Except with respect to proxies in favor of a tenant or Mortgagee, no proxy shall in any event be valid for a period in excess of one hundred and eighty (180) days after the execution thereof. Any form of proxy which is sufficient in law may be used, but the following form of proxy shall be deemed sufficient:

The undersigned hereby irrevocably constitute and appoint _____ their attorney-in-fact and proxy for the sole purpose of casting the vote allocated to Unit _____, on all matters submitted to vote at that meeting of _____, to be held on _____, 20____. The undersigned hereby ratify and confirm all such votes cast on behalf of said Unit at that meeting, and certify that they are fully authorized to execute this instrument of proxy on behalf of all owners of any fee interest in said Unit.

This the ____ day of _____, 20____.
(Signature) _____

Section 3.8 Action by Members Without Meeting. Any action that may be taken at a meeting of the Members may be taken without a meeting if such action is authorized in a writing setting forth the action taken, signed by all Members entitled to vote on the action. The action shall be evidenced by one or more written consents describing the action taken, signed before or after such action by all Members entitled to vote thereon, and delivered to the Association for inclusion in the minutes or filing with the Association records. The record date for determining Members entitled to take action without a meeting is the date the first Member signs the consent. A consent signed under this Section has the effect of a meeting vote and may be described as such in any document.

ARTICLE IV
BOARD OF DIRECTORS

Section 4.1 Number. The Board of Directors shall be composed of not less than three (3) or more than five (5) persons. The initial Board, who shall serve until Unit Owners other than Declarant elect a majority of the Board as is hereafter provided, shall be composed of three (3) persons who need not be Members of the Association. As is hereinafter provided in Section 4.5 of this Article, at the meeting in which the Members other than Declarant are entitled to elect a majority of the members of the Board, the number of directors on the Board shall be increased from three (3) to five (5). Subsequent to the Declarant Control Period, the number of members of the Board of Directors may be increased or

decreased from time to time upon the affirmative vote of persons entitled to seventy-five percent (75%) of the votes in the Association; provided, however, pursuant to § 47C-3-103(f) of the Act, the Board of Directors shall not be composed of less than three (3) persons.

Section 4.2 Qualification and Term. Except for members of the Board of Directors designated and appointed by Declarant as is hereinafter provided, all directors shall be a Member or the individual nominee of said Member, if said Member is not an individual. Other than the directors appointed by Declarant, each director shall hold office for a term of one (1) year, or until his death, resignation, retirement, removal, disqualification or until his successor is elected and qualified.

Section 4.3 Removal of Members of the Board. At any regular or special meeting duly called, any one or more of the members of the Board of Directors may be removed with or without cause by Members owning a majority of the votes in the Association and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed by the Members shall be given at least seven (7) days notice of the time, place and purposes of the meeting and shall be given the opportunity to be heard at the meeting. Notwithstanding anything in this Section to the contrary, no person selected and appointed by the Declarant as a member of the Board of Directors may be removed without the written consent of the Declarant, and in such event the Declarant shall select and designate his successor.

Section 4.4 Vacancies. Vacancies on the Board of Directors caused by any reason other than the removal of a Director by a vote of the Members shall be filled at a special meeting held for that purpose promptly after the occurrence of any such vacancy. The aforementioned elections shall take place and the results thereof shall be binding even though the Members present at such meeting may constitute less than a quorum. Each person elected in accordance with this Section shall be a member of the Board of Directors for the remainder of the term of the predecessor member, and until a successor shall be elected. The Declarant shall designate the successor to any director previously designated by the Declarant who resigns or is removed by the Declarant.

Section 4.5 Appointment of Board by Declarant.

(a) Subject to the provisions of subparagraph (b) of this Section 4.5, Declarant shall have the right to designate, select and appoint all officers of the Association, and all the members of the Board of Directors of the Association during the Declarant Control Period. Declarant shall have the right to remove any person appointed by it to serve as a director and to replace such person with another person selected by Declarant to act and serve in the place of any director so removed. Any representative of Declarant serving on the Board shall not be required to disqualify himself from any vote upon a management contract or any other contract or lease between Declarant and the Association where the Declarant may have a pecuniary or other interest. Declarant shall designate, appoint, remove, and reappoint directors when entitled to do so by written statement addressed to the Association, and a copy of such statement shall be placed in the minute book.

The Declarant can turn over control of the Association prior to the expiration of the Declarant Control Period by causing all or part of its appointed directors to resign and by not appointing replacement directors, whereupon it shall be the affirmative obligation of the Members to elect directors and assume control of the Association. Declarant shall give written notice of its intention to so surrender control of the Association to the Board and the Members of the Association and provided that, at least thirty (30) days notice of Declarant's decision to cause its appointees to resign without replacement is given to the Members, neither the Declarant, nor such appointees, shall be liable in any manner in connection with such resignations even if the Members other than Declarant refuse or fail to assume control.

(b) Notwithstanding anything to the contrary in subparagraph (a) of this Section 4.5, no later than sixty (60) days after conveyance by Declarant of twenty-five percent (25%) of all Units to Unit Owners other than Declarant, at least one member and not less than twenty-five percent (25%) of the members of the Board of Directors of the Association shall be elected by Members at a special meeting of the Association called for such purpose. Notwithstanding anything to the contrary in subparagraph (a) of this Section 4.5, no later than sixty (60) days after conveyance by Declarant of fifty percent (50%) of all Units to Unit Owners, not less than thirty-three percent (33%) of the members of the Board of Directors of the Association shall be elected by Members at a special meeting of the Association called for such purpose. Any member of the Board elected by Unit Owners other than Declarant pursuant to this provision shall serve for a term of one (1) year or until the expiration of the Declarant Control Period, whichever is shorter, provided that the first director elected hereunder by Unit Owners other than Declarant shall be elected for a term which expires at the next annual meeting of the Members so that thereafter this member of the Board may be elected at the annual meeting of the Association.

(c) Upon the expiration of the Declarant Control Period or if the Declarant should sooner decide to voluntarily surrender its control of the Association, the Board shall notify the Members of a special meeting of the Association for the purpose of electing directors of the Association and such other matters as may be specified in the notice. Notice of such meeting shall be given by the Secretary in accordance with the provisions of these Bylaws. At the time of such meeting of the Association where the Members are entitled to elect a majority of the members of the Board, the number of Directors shall be increased from three (3) persons to five (5) persons. All five (5) positions on the Board shall be filled at this special meeting of the Members.

Section 4.6 Regular Meetings. Regular meetings of the Board of Directors shall be held at such time on the Property, or other convenient location in the Asheville, North Carolina, as shall be determined from time to time by a majority of the directors, but such meetings shall be held at least quarterly during each fiscal year.

Section 4.7 Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) business days notice to each director given personally or by mail, facsimile or telephone, which notice shall state the time, place and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President or Secretary in like manner and on like notice on the written request of all the directors. No business shall be transacted at a special meeting except that which is stated in the notice thereof.

Section 4.8 Quorum; Adjournment If No Quorum. A majority of the Board shall constitute a quorum for the transaction of business at any meeting of the Board. If a quorum is not present, the meeting shall be adjourned from time to time until a quorum is present. The signing by a Director of the minutes of a meeting shall constitute the presence of such director at that meeting for the purpose of determining a quorum.

Section 4.9 Manner of Acting. Each Director shall be entitled to one (1) vote. The act of a majority of the directors present at a meeting where a quorum is present shall constitute the act of the Board unless the act of a greater number is required by the provisions of applicable law, the Declaration, or these Bylaws.

Section 4.10 Board Action Without Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if all of the directors shall individually or collectively consent in writing to such action. Any such written consent shall be filed with the minutes of the proceedings of the Board of Directors.

Section 4.11 Compensation of Directors Restricted. No director shall receive any compensation from the Association for acting as such, unless such compensation is approved by a majority of the Members, in which event such compensation shall be reasonable and customary. Reimbursement of expenses incurred by directors on behalf of the Association shall be permissible.

Section 4.12 Powers and Duties of Board. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association. The Board of Directors shall delegate to one or more of its members, or to a person employed for such purpose the authority to act on behalf of the Board on such matters relating to the duties of the Managing Agent which may arise between meetings of the Board as the Board deems appropriate. Such powers and duties shall be exercised in accordance with the provisions of applicable law, including Section 47C-3-102 of the Act, the Declaration, and these Bylaws, and shall include, but not be limited to, the following:

(a) To prepare and adopt an annual budget, in which there shall be expressed the assessments of each Unit Owner for the Common Expenses.

(b) To make assessments against Unit Owners to defray the costs and expenses related to the maintenance and operation of the Common Elements, establish the means and methods for collecting such assessments from the Unit Owner and establish the period of the installment payment of the annual assessment for said expenses.

(c) To provide for the operation, care, upkeep and maintenance of the Common Elements.

(d) To designate, hire and dismiss the personnel necessary for the maintenance, operation, repair and replacement of the Common Elements and, where appropriate, provide for the compensation of such personnel and for the purchase of equipment, supplies and material to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed part of the Property.

(e) To collect the Common Expense assessments against the Unit Owners, deposit the proceeds thereof in bank depositories designated by the Board of Directors and use the proceeds to carry out the administration of the Property.

(f) To adopt and amend any Rules and Regulations pertaining to the operation or use of the Common Elements provided, however, that such Rules and Regulations shall not be in conflict with the Condominium Instruments.

(g) To open bank accounts on behalf of the Association and designate the signatories thereon.

(h) To make, or contract for the making of, repairs, additions and improvements to or alterations or restoration of the Common Elements in accordance with these Bylaws and the Declaration.

(i) To enforce by legal means the provisions of the Declaration, these Bylaws and the Condominium Rules, act on behalf of the Members with respect to all matters arising out of any condemnation or eminent domain proceeding affecting the Common Elements, and notify the Members of any litigation against the Association involving a claim in excess of ten percent (10%) of the amount of the annual budget for the Association.

(j) To obtain and carry insurance against casualties and liabilities, including either (i) 100% replacement coverage on the Building (less a commercially reasonable deductible not to exceed \$10,000),

liability insurance with coverage of at least \$1,000,000 per occurrence, and fidelity bond coverage or (ii) the coverages required by the North Carolina Condominium Act, whichever are more, pay the premiums therefor and adjust and settle any claims thereunder.

(k) To pay the cost of all authorized services rendered to the Association and not billed to Unit Owners.

(l) To keep books with accounts affecting the Common Elements and the administration of the Common Elements. Such books and vouchers accrediting the entries therein shall be available for examination by the Members, their attorneys, accountants, Mortgagees and authorized agents during normal business hours on business days at the times and in the manner set and announced by the Board of Directors for the general knowledge of the Members. All books and records shall be kept in a manner verifiable upon an audit and shall be subjected to an independent financial review at least annually by an independent auditor retained by the Board of Directors who shall not be a resident of the Condominium or a Member or an employee or agent of any Member. The books and records shall be subject to an independent audit upon the request of Members to which at least 51% of the votes in the Association appertain. The cost of such audit shall be a Common Expense. The Board, on behalf of the Association, shall also keep current copies of the Declaration, Bylaws and Condominium Rules and Regulations.

(m) To borrow money on behalf of the Condominium when required in connection with the operation, care, upkeep and maintenance of the Common Elements provided, however, that (except during the Declarant Control Period) a vote in writing by Members of Units to which more than fifty one percent (51%) of the votes in the Association appertain shall be required to borrow any sum in excess of ten percent (10%) of the total annual assessment for Common Expenses for that fiscal year.

(n) Acquire, hold and dispose of Units and mortgage the same without the prior approval of the Association if such expenditures and hypothecations are included in the budget adopted by the Association.

(o) Do such other things and acts not inconsistent with the Condominium Instruments which the Board of Directors may be authorized to do by a resolution of the Association.

Section 4.13 Managing Agent. The Board of Directors may employ for the Condominium a "Managing Agent" at a compensation to be established by the Board. The Managing Agent shall perform such duties and services as the Board of Directors shall direct. The Managing Agent shall perform the obligations, duties and services relating to the management of the Property and the rights of Mortgagees in compliance with the provisions of the Declaration or these Bylaws.

Section 4.14 Common or Interested Directors. Each Director shall exercise such Director's powers and duties in good faith and with a view to the interests of the entire Condominium. A contract or other transaction between the Association and any of its Directors, or between the Association and any corporation, firm or association (including the Declarant) in which any of the directors of the Association are directors or officers or are pecuniarily or otherwise interested, is not void or voidable because any such Director is present at the meeting of the Board of Directors which authorizes or approves the contract or transaction, or because such director's vote is counted for such purpose, if any of the conditions specified in any of the following subsections exist:

(a) The fact of the common directorate or interest is disclosed or known to the Board of Directors or noted in the minutes, and the Board of Directors authorizes, approves or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or

(b) The fact of the common directorate or interest is disclosed or known to at least a majority of the Members, and the Members approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or

(c) The contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Any common or interested directors may be counted in determining the presence of a quorum of any meeting of the Board of Directors or committee thereof which authorizes, approves or ratifies any contract or transaction, and may vote at the meeting to authorize any contract or transaction with like force and effect as if such director of the Association were not an officer or director of such other corporation, firm or association or not so interested.

Section 4.15 Committees. The Board of Directors may create and appoint Members to such committees as they determine appropriate.

Section 4.16 Notice and Waiver. Notice of meetings of the Board of Directors shall be given to each director, personally or by mail, facsimile or telephone, at least three (3) business days prior to the day named for such meeting. Any director may at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director, in person or by telephone communication, at any meeting of the Board of Directors shall constitute a waiver of notice by such director of the time, place and purpose of such meeting. If all directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting

Section 4.17 Legal Proceedings. The Board of Directors shall have the exclusive right to initiate any form of legal proceedings as it deems necessary and appropriate related to the use, operation, or maintenance of the Property, subject to the following requirements. "Legal Proceedings" as used in this Section shall mean any form of action or suit, including, but not limited to, demands for performance of Declarant obligations hereunder, under the Condominium Instruments, or contained in any statute, regulation or ordinance or at common law; and shall include the assertion, through litigation, arbitration, or otherwise, or the defense of any claims or actions related to the Property. Notwithstanding the foregoing, the filing and enforcement of liens, the initiation of legal action for routine Common Expense assessment collection matters or legal actions required to enforce provisions of the Declaration, Bylaws or Condominium Rules and Regulations with respect to the Property shall not be deemed Legal Proceedings for purposes of this Section and such actions shall not be subject to the requirements of this Section.

Section 4.18 Board of Directors as Agent. The Board of Directors shall have the power to act as agent for the Unit Owners of all of the Units and for each of them, to manage, control and deal with the interests of such Unit Owners in the Property or the Condominium to permit the Board of Directors to fulfill all of its powers, rights, functions and duties. The Board of Directors shall have the power to act as agent for each Unit Owner, each Mortgagee, other named insured and their beneficiaries and any other holder of a lien or other interest in the Condominium or the Property to: (i) adjust and settle all claims arising under insurance policies purchased by the Board of Directors with respect to the Property, (ii) execute and deliver releases upon the payment of claims, and (iii) act on their behalf in any condemnation proceeding or action of eminent domain affecting the Property.

ARTICLE V
OFFICERS

Section 5.1 Designation of Officers. The Officers of this Association shall be a President, a Vice-President, a Secretary, and a Treasurer. Each Officer shall be a Unit Owner or the individual nominee of the Unit Owner, if the Unit Owner is not an individual; provided, however, the Officers elected by the initial Board or by any Board to which Declarant is entitled to appoint a majority of the directors are not required to be Unit Owners. A person may hold one or more of such offices at one time, except that the President shall not at the same time hold another office in the Association. The Board may elect an assistant treasurer, an assistant secretary, and such other Officers as in its judgment may be necessary. The President and Vice President shall be members of the Board of Directors. Any other Officers may, but need not, be directors. Each Officer shall perform such duties as are normally associated with such office in parliamentary organizations, except to the extent (if any) inconsistent with the Condominium Instruments, and shall perform such other duties as may be assigned to such office by resolution of the Board of Directors. If any Officer is unable for any reason to perform the duties of the office, the President (or the Board of Directors if the President fails to do so) may appoint another qualified person to act in such Officer's stead on an interim basis.

Section 5.2 Election of Officers. Officers of the Association shall be elected by the Board. Election shall be held annually at the first meeting of the Board held after the annual meeting of the Members. Except for death, resignation or removal, the officers shall hold office until their respective successors shall have been elected by the Board.

Section 5.3 Term. Each Officer shall serve until his successor has been duly elected and has qualified.

Section 5.4 Removal. Upon the affirmative vote of a majority of the Board of Directors, any Officer may be removed, either with or without cause, and a successor may be elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 5.5 Vacancy. Any vacancy in any office shall be filled by the Board, and an Officer elected to fill a vacancy shall serve for the unexpired term of his predecessor in office.

Section 5.6 Powers and Duties of Officers.

(a) **President.** The President shall be the chief executive Officer of the Association; preside at all meetings of the Association and of the Board; have general and active direction of the business of the Association subject to the control of the Board; see that all orders and resolutions of the Board are carried into effect; and appoint committees from time to time as the President may decide is appropriate to assist in the conduct of the affairs of the Association.

(b) **Vice President.** The Vice-President shall perform such duties of the President as shall be assigned to him by the President, and in the absence of the President shall perform the duties and functions of the President. If neither the President nor the Vice President is able to act, the Board of Directors shall appoint some other Director to act in the place of the President, on an interim basis. The Vice President shall also perform such other duties as shall from time to time be imposed by the Board of Directors or by the President.

(c) **Secretary.** The Secretary shall keep the minutes of all meetings of the Association and of the Board of Directors; have charge of such books and papers as the Board may direct; give or cause to be given all notices required to be given by the Association; maintain a register setting forth the place to

which all notices to Members and Mortgagees hereunder shall be delivered; and, in general, perform all the duties incident to the office of Secretary.

(d) **Treasurer.** The Treasurer shall (together with the Managing Agent) be responsible for Association funds and securities; keep full and accurate financial records and books of account showing all receipts and disbursements; prepare all required financial data; deposit all monies and other valuable effects in the name of the Board of Directors, the Association or the Managing Agent, in such depositories as may from time to time be designated by the Board; and, in general, perform all the duties incident to the office of Treasurer.

Section 5.7 Execution of Documents. Unless otherwise provided in the resolution of the Board of Directors: (i) all agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations in excess of Two Thousand Dollars (\$2,000.00) and all checks drawn upon reserve accounts shall be executed by any two (2) persons designated by the Board of Directors; and (ii) all such instruments for expenditures or obligations of Two Thousand Dollars (\$2,000.00) or less, except from reserve accounts, may be executed by any one (1) person designated by the Board of Directors. Any officer may prepare, execute, certify and record amendments to the Declaration on behalf of the Association.

Section 5.8 Compensation of Officers Restricted. No Officer shall receive any compensation from the Association for acting as such Officer unless otherwise agreed by the Members representing a majority of the Common Element Interests, in which event such compensation shall be reasonable and customary. Officers may be reimbursed for expenses incurred in carrying out the functions of their office if approved by the Board of Directors.

ARTICLE VI **LIABILITY AND INDEMNIFICATION OF DIRECTORS AND OFFICERS**

Section 6.1 Liability.

(a) The Officers and directors of the Association shall not be liable to the Association or any Member for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify and hold harmless each of the Officers and directors from and against all contractual liability to others arising out of contracts made by the Officers or the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Condominium Instruments, except to the extent that such liability is satisfied by directors and officers liability insurance. Officers and directors shall have no personal liability with respect to any contract made by them on behalf of the Association. The liability of any Member arising out of any contract made by the Officers or Board of Directors, or out of the indemnification of the Officers or directors, or for damages as a result of injuries arising in connection with the Property solely by virtue of ownership of a Common Element Interest therein or for liabilities incurred by the Association, shall be limited to the total liability multiplied by such Member's Common Element Interest. Every agreement made by the Officers, the Board of Directors or the Managing Agent on behalf of the Association shall provide that the directors, Officers and the Managing Agent shall have no personal liability thereunder (except as Members), and that each Member's liability thereunder shall be limited as set forth above.

(b) The Association shall not be liable for any failure of any utilities or other services to be obtained by the Association or paid for as a Common Expense, or for injury or damage to person or property caused by the elements or by the Unit Owner of any Unit, or any other person, or resulting from

electricity, water, snow or ice which may leak or flow from or over any portion of the Property or from any pipe, drain, conduit, appliance or equipment. The Association shall not be liable to any Member for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Property. No diminution or abatement of any assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Property or from any action taken by the Association to comply with any law, ordinance, order or directive of any governmental authority.

Section 6.2 Indemnification. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that such person is or was an Officer, or director of the Association against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Condominium. In addition, the Association is authorized to maintain Officers and directors liability insurance.

ARTICLE VII **FISCAL MANAGEMENT**

Section 7.1 Depository. Other than Replacement Reserves, which shall be segregated in separate account and held by the Association as agent for the Unit Owners, all sums collected by the Board of Directors with respect to Common Expense assessments against the Unit Owners or from any other source may be commingled into a single fund. All interest income on all accounts shall be income to and for the use of the Association.

Section 7.2 Fidelity Bond. Fidelity bonds shall be maintained by the Association, in an amount determined by the Board, covering each Director and Officer of the Association, any employee or agent of the Association and any other person handling or responsible for handling funds of the Association. The Board may vote to waive this requirement at a meeting duly held under the provisions set forth in these Bylaws.

Section 7.3 Fiscal Year. The fiscal year of the Association shall be January 1 through December 31, unless otherwise determined by the Board.

ARTICLE VIII **BUDGET AND ASSESSMENTS**

Section 8.1. Preparation and Approval of Budget.

(a) At least sixty (60) days before the beginning of each fiscal year, the Board of Directors shall adopt a budget for the Association containing an estimate of the total amount considered necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements, and those other parts of the Condominium as to which it is the responsibility of the Association to maintain, repair and replace, pursuant to the Condominium Instruments, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses and which will be required during the ensuing fiscal year for the administration, operation, maintenance and repair of the Common Elements and other parts of the Condominium for which the Association is responsible pursuant to the Condominium Instruments.

(b) Such budget shall also include such reasonable amounts as the Board of Directors considers necessary to provide reasonable working capital for day-to-day operations, contingencies, and other operating cash flow fluctuations (including losses due to insurance deductibles), and Replacement Reserves, for substantial repairs and replacements, as the same are associated with the Common Elements or other property required to be maintained by the Association pursuant to the Condominium Instruments. Such budget shall constitute the basis for determining each Unit Owner's assessment for the Common Expenses of the Condominium.

(c) Within five (5) days after adoption of any proposed budget for the Condominium, the Board of Directors shall provide to each Unit Owner a copy of the budget and shall set a date for a meeting of the Members to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing of the summary. The copy of the budget shall be in a reasonably itemized form which sets forth the amount of the Common Expenses and any special assessment payable by each Unit Owner. There shall be no requirement that a quorum be present at the meeting. The budget is ratified unless at that meeting a majority of all of the Members or any larger vote specified in the Declaration rejects the budget. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Members ratify a subsequent budget proposed by the Board of Directors.

(d) Whenever, in the judgment of the Board of Directors, the Common Elements shall require additions, alterations, renovations or improvements either costing in excess of five percent (5%) of the Association's annual budget during the preceding fiscal year or involving the use of Replacement Reserves, the making of such additions, alterations, renovations or improvements shall require a Majority Vote of the Members, and the Board of Directors shall assess the cost thereof as a Common Expense. Any additions, alterations, renovations or improvements costing five percent (5%) of the Association's annual budget or less during the preceding fiscal year, and not involving the use of Replacement Reserves, may be made by the Board of Directors without approval of the Members and the cost thereof shall constitute a Common Expense.

Section 8.2 Assessment and Payment of Common Expenses. The total amount of the estimated funds required from assessments for the operation and maintenance of the Common Elements and any other property for which the Association is responsible pursuant to the Condominium Instruments set forth in the budget adopted by the Board of Directors shall be assessed against each Unit Owner in proportion to such Unit Owner's respective Common Element Interest. The assessment for Common Expenses shall be a lien against each Unit Owner's Unit. On or before the first day of each fiscal year, each Unit Owner shall be obligated to pay to the Board of Directors or the Managing Agent (as determined by the Board) the yearly assessment for its Unit. Within ninety (90) days after the end of each fiscal year, the Board of Directors shall supply to all Unit Owners, and to each Mortgagee requesting the same, an itemized accounting of the Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Board of Directors for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be understood by all the parties to be held by the Association as agent for the Unit Owners and shall, at the discretion of the Unit Owners, be placed in reserve accounts or distributed to the Unit Owners. Any net shortage shall be assessed promptly against the Unit Owners in accordance with their Common Element Interests and shall be payable either: (1) in full with payment of the next yearly assessment due; or (2) in not more than six (6) equal monthly installments, as the Board of Directors may determine.

Section 8.3 Reserves. The Board of Directors shall build up and maintain reasonable working capital for day-to-day operations, contingencies, and other operating cash flow fluctuations (including losses due to insurance deductibles), and Replacement Reserves, for substantial repairs and

replacements, as the same are associated with the Common Elements or other property required to be maintained by the Association pursuant to the Condominium Instruments. Replacement Reserves shall, for the convenience of the Unit Owners, be accumulated for replacement of portions of the Common Elements and shall be segregated in a separate account and held by the Association as agent for the Unit Owners. Extraordinary expenditures associated with the Common Elements or other property required to be maintained by the Association not originally included in the annual budget which may become necessary during the year shall be charged first against working capital, unless sufficient funds to meet such expenditures are otherwise available in the operating account. Other than for normal maintenance expenses shown in the annual operating budget, all expenses for substantial repairs and replacement of physical assets maintained by the Association shall be charged first against such Replacement Reserves. Unless otherwise determined by a vote of all the directors, the amount held as reserves shall not substantially exceed the amount reasonably required to assure the Association's ability to replace components as they reach the end of their useful lives. If regular annual maintenance extends the useful life of components so that reserves are excessive, the reserves shall be adjusted by reallocation to other budget items or by distribution to the Unit Owners as the Board of Directors may determine. If the reserves are inadequate for any reason, including nonpayment of any Unit Owner's assessment, the Board of Directors may at any time levy a further assessment, which shall be assessed against the Unit Owners according to their respective Common Element Interests, and which may be payable in a lump sum or in installments as the Board may determine. The Board of Directors shall serve notice of any such further assessment on Unit Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall, unless otherwise specified in the notice, become effective with the next yearly payment which is due after the delivery of such notice of further assessment. All Unit Owners so notified shall be obligated to pay the adjusted amount or, if such further assessment is not payable in installments as approved by the Board, the amount of such assessment. Such assessment shall be a lien as of the effective date.

Section 8.4 Initial Budget and Initial Capital Payment.

(a) Upon taking office, the first Board of Directors elected or designated pursuant to these Bylaws shall determine the budget, as defined in this Section, for the period commencing thirty (30) days after such election and ending on the last day of the fiscal year in which such election occurs. Assessments shall be levied and become a lien against the Unit Owners during such period.

(b) The Declarant, as the agent of the Board of Directors, shall collect from each initial purchaser of all Units, at the time of settlement a non-refundable contribution to the working capital fund equivalent to two months of assessments, based upon a proration of the estimated annual assessments, for Common Expenses for such purchaser's Unit. This amount is in addition to the yearly assessments. The Declarant will deliver the funds so collected to the Board of Directors to provide the necessary working capital for the Association. Such funds may be used for certain prepaid items, initial equipment, supplies, organizational costs and other start-up costs, and for such other purposes as the Board of Directors may determine.

Section 8.5 Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay the allocable share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay each yearly installment at the yearly rate established for the previous fiscal year until notified of the yearly payment which is due at least ten (10) days after such new annual or adjusted budget is adopted.

ARTICLE IX
COMPLIANCE AND DEFAULT

Section 9.1. Relief. Each Member shall be governed by and shall comply with, all of the terms of the Condominium Instruments and any rules and regulations which are a part thereof or which are promulgated by the Board of Directors, as any of the same may be amended from time to time. A default by a Member shall entitle the Association, acting through its Board of Directors or through the Managing Agent, to the relief described in this Article.

(a) **Additional Liability.** Each Member shall be liable to the Association, or to any affected Member, as applicable, for the expense of all maintenance, repair or replacement rendered necessary by such act, neglect or carelessness of the Member, any member of such Member's household or such Member's guests, invitees, tenants, agents or employees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors; provided, however, at the discretion of the Board of Directors, the Board may assess such expense directly against the Member rather than, or in addition to, making an insurance claim. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation. Any costs, including, without limitation, legal fees, incurred as a result of a failure to comply with the Condominium Instruments and any Condominium Rules by any Member (or any member of such Member's household or such Member's guests, invitees, tenants, agents or employees) may be assessed, and shall constitute a lien against such Member's Unit.

(b) **Costs and Attorney's Fees.** In any proceedings arising out of any alleged default or violation by a Member, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees as may be determined by the court.

(c) **No Waiver of Rights.** The failure of the Association, the Board of Directors, or of a Member to enforce any right, provision, covenant or condition which may be granted by the Condominium Instruments shall not constitute a waiver of the right of such party to enforce such right, provision, covenant or condition in the future. All rights, remedies and privileges granted pursuant to any term, provision, covenant or condition of the Condominium Instruments shall be deemed to be cumulative and the exercise of any one (1) or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the Condominium Instruments or at law or in equity.

(d) **Interest.** In the event of a default by any Unit Owner in paying any sum assessed against the Unit which continues for a period in excess of fifteen (15) days, interest at a rate not to exceed the maximum rate permitted by law may be imposed in the discretion of the Board of Directors, on the principal amount unpaid from the date due until paid.

(e) **Abating and Enjoining Violations by Members.** The violation of any of the Rules and Regulations adopted by the Board of Directors, or the breach of any provision of the Condominium Instruments shall give the Board of Directors the right, in addition to any other rights set forth in these Bylaws (after giving the Member a notice and a reasonable opportunity to cure): (i) to enter the Unit in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Member, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; (ii) to use self-help to remove or cure any violation of the Condominium Instruments or any Condominium Rules and Regulations on the Common Elements (including without

limitation the towing of vehicles) or in any Unit; or (iii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach; provided, however, that before any construction may be altered or demolished (except in emergencies) judicial proceedings shall be instituted.

(f) **Legal Enforcement.** Failure to comply with any of the terms of the Condominium Instruments and any Condominium Rules and Regulations shall be grounds for relief, including without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in these Bylaws or any combination thereof and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Association, the Board of Directors, the Managing Agent or, if appropriate, by any aggrieved Member and shall not constitute an election of remedies. The Association and the Board of Directors may only enforce such Rules and Regulations and provisions of the Declaration and Bylaws which affect the portion of the Property within its jurisdiction and which such party is authorized to enforce pursuant to the Declaration and these Bylaws.

(g) **Charges.** The Board of Directors may levy reasonable charges against Members for violations of the Condominium Instruments or any Condominium Rules by the Member, the members of such Member's household, or such Member's guests, invitees, tenants, agents or employees with respect to the portion of the Property or area of jurisdiction of such party. No charge may be levied for a single violation in an amount more than: (i) the maximum amount permitted by law or (ii) one percent (1%) of such Unit Owner's annual assessment, whichever is less. Each day a violation continues, after notice is given to the Member, is a separate violation. If a Member requests in writing a hearing before the charge is imposed, the imposition of the charge shall be suspended until the hearing is held. Charges are special assessments and shall be collectible as such.

Section 9.2. Lien for Assessments.

(a) **Lien.** Assessments of each Unit Owner for Common Expenses are hereby declared to be a lien levied against the Unit of such Unit Owner, which lien shall, with respect to annual assessments, be effective on the first day of each calendar year after conveyance of said Unit to the Owner. As to special assessments and other sums duly levied, said amounts are declared to be liens on the first day of the next calendar year after delivery to the Unit Owner of notice of such special assessment or levy. The Board of Directors, or the Managing Agent, may file or record such other or further notice of any such lien, or such other or further document, as may be required to confirm the establishment and priority of such lien.

(b) **Acceleration.** In any case where an assessment against a Unit Owner is payable in installments as approved by the Board, upon a default by such Unit Owner in the timely payment of any two (2) consecutive installments, the maturity of the remaining total of the unpaid installments of such assessments may be accelerated, at the option of the Board of Directors, and the entire balance of the annual assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting Unit Owner by the Board of Directors, or the Managing Agent.

(c) **Enforcement.** The lien for assessments may be enforced and foreclosed in any manner permitted by law. Such action may be taken in the name of the Board of Directors, or the Managing Agent, acting on behalf of the Association, as applicable. During the pendency of such suit the Unit Owner shall be required to pay a reasonable rental for the Unit for any period prior to sale pursuant to any judgment or order of any court having jurisdiction over such sale.

(d) **Remedies Cumulative.** A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

ARTICLE X AMENDMENT

Section 10.1 Amendments to Bylaws. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of 67% of the Members. The notice of the meeting shall set forth the proposed amendment or a summary of the changes to be effected thereby; provided, however, that no amendment to these Bylaws by the members of the Association shall be effective prior to the expiration of the Declarant Control Period without the prior written consent of Declarant.

Section 10.2 Execution of Amendments to Declaration. Any and all amendments to the Declaration on behalf of the Association shall be prepared by the Secretary or Assistant Secretary. Such amendments shall be certified and executed by the President or Vice President of the Association and attested by the Secretary or Assistant Secretary of the Association with all the formalities of a deed. Any such amendment shall be recorded in the Office of the Register of Deeds for Buncombe County, North Carolina by the President, Vice President, Secretary or any Assistant Secretary of the Association.

ARTICLE XI GENERAL PROVISIONS

Section 11.1 Rules and Regulations.

(a) **By the Board.** The Board may promulgate from time to time such Rules and Regulations as it deems reasonable and necessary governing the administration, management, operation and use of the Common Elements so as to promote the common use and enjoyment thereof by Unit Owners and for the protection and preservation thereof. In addition, the Board may adopt such Rules and Regulations as it deems reasonable and necessary with respect to Units to provide for the common good and enjoyment of all Unit Owners.

(b) **By the Association.** Any such rule or regulation adopted by the Board may be amended, modified, or revoked, and new and additional Rules and Regulations may be adopted, by Members at an annual or special meeting of the Members. Any such act of the Members shall control over any contrary rule or regulation then or thereafter adopted by the Board.

(c) **Uniform Application.** All Rules and Regulations shall be equally and uniformly applicable to all Unit Owners.

(d) **Copies Furnished.** Copies of all such Rules and Regulations and any amendments thereto shall be furnished to all Members, and a copy shall be posted or otherwise made available to Members at the office of the Association. However, failure to furnish, or post, or make available, such Rules and Regulations shall not affect in any way their validity or enforceability.

Section 11.2 Conduct of Meetings. The then current edition of Robert's Rules of Order shall govern the conduct of Association proceedings when not in conflict with the Declaration, these Bylaws, the Act, or any statutes of the State of North Carolina applicable thereto.

Section 11.3 Compliance with the Act; Conflict; Severability. These Bylaws are established in compliance with the Act, as amended. Should any of the terms, conditions, provisions, paragraphs, or clauses of these Bylaws conflict with any of the provisions of said Act, the provisions of said Act shall control unless the Act permits these Bylaws to override the Act, in which event these Bylaws shall control. In the case of any conflict between the provisions of these Bylaws and the Declaration, the Declaration shall control. If any terms, provision, limitation, paragraph, or clause of these Bylaws, or the application thereof to any person or circumstance, if judicially held to be invalid, such determination shall not affect the enforceability, validity, or effect of the remainder of these Bylaws, or the application thereof to any other person or circumstance.

Section 11.4 Notices. Whenever in the Declaration, the Act, or these Bylaws, it shall be required or permitted that notice or demand be given or served on the Association or a Member or a Mortgagee or other party entitled to notice, such notice or demand shall be given in writing by registered or certified mail, postage prepaid, to the respective addresses as hereinafter set forth. All notices or demands provided under the terms of the Declaration, the Act or these Bylaws shall be effective when actually received by a party entitled to notice or when attempted to be delivered as authorized above. The addresses of a party entitled to notice may be changed, from time to time, by said party. Notices shall be served as follows:

UNIT OWNER OR MORTGAGEE AT: THE ADDRESS GIVEN AND ON FILE WITH THE ASSOCIATION

ASSOCIATION: P.O. Box 1467
Asheville, NC 28802

Section 11.5 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 these Bylaws or the intent of any provision thereof.

Section 11.6 Gender. The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

Section 11.7 Use of Electronic Mail or Meeting. Any action or vote which may be taken or entered by a director, Unit Owner or Member in person, or by proxy, other than a vote on amendment of the Declaration, may, in the alternative, be accomplished by the use of electronic mail or electronic meeting utilized in accordance with rules promulgated by the Board of Directors establishing reasonable safeguards as to the genuineness of the action and notice to the other participants. The action shall be evidenced by a written record describing the action taken, signed before or after such action by all Members utilizing said method, and delivered to the Association for inclusion in the minutes or filing with the Association's records.

EXHIBIT C
RULES AND REGULATIONS

1. Public Areas
 - A. No bicycles, scooters, or similar vehicles, or other personal property of Unit Owners or tenants, shall be allowed to stand in the public areas.
 - B. Pets shall be on a leash or carried at all times in the common areas of the Building(s).
 - C. No smoking, cooking or barbecuing, nor solvents, petroleum-based products or other chemicals of similar nature, shall be permitted in or upon the Common Elements, including any Limited Common Elements of any Unit.

2. Windows and Balconies
 - A. Awnings and/or window boxes may be used in or about the Building only with the advance written consent of the Association, and the type, color and method of attachment must be approved by the Association.
 - B. Nothing shall be projected or shaken out of any window of the Building, nor placed upon the windowsills without the express approval of the Association.
 - C. Except such signs as may be erected by the Declarant in furtherance of sale of Condominium Units, no sign, notice, advertisement, or illumination shall be inscribed or exposed on or out any window or other part of the Building above the street level floor, except such as shall have been approved in writing by the Association. Notwithstanding the above, during the period of Declarant Control, no signs shall be erected in or on any part of the Building except if Declarant shall have given its prior written approval.
 - D. Each Owner or tenant shall keep the storm windows and the interior face of his/her exterior windows clean. In case of refusal or neglect of an Owner or tenant, after 10 days notice in writing from the Association or the Managing Agent to clean the windows, such cleaning may be done by the Association or Managing Agent, which shall have the right to enter the Unit for such purpose and to charge the cost of such cleaning to the Unit Owner or tenant.
 - E. Nothing may be hung from any Unit window or interior balcony or Unit balcony railing (including, but not limited to laundry, towels and rugs), at any time.
 - F. No Unit owner may screen in the exterior porch portion of their Unit.

3. Trash and Recycling
 - A. Garbage and refuse from all Units shall be disposed of regularly but only at such times and in such manner as the Association may direct.
 - B. Only bagged trash shall be placed in the trash areas. Only bagged recyclable paper, glass, plastic, and metals shall be placed in the recycling areas.

4. Disturbances
 - A. No Unit Owner or tenant shall make, permit, or cause disturbing noises, smells, or vibrations, in the building or do or permit anything to be done therein which unreasonably disturbs other occupants or unreasonably interferes with the right, comfort, or convenience of other Unit Owners.

- B. No Unit Owner or tenant shall play upon or suffer to be played upon any musical instrument or permit to be operated any device connected to speakers, such as a CD player, phonograph, radio, VCR, computer, or television in said Owner's or tenant's Unit between the hours of midnight and the following 8:00 a.m., if the same shall disturb or annoy any other occupants of the Building. In any event, Unit Owners and tenants shall at all times comply with City of Asheville ordinances regarding sound and noise.
- C. No construction or repair work or other installation involving noise, smell, or vibration shall be conducted in any Units except on weekdays and Saturdays (not including legal holidays) and only between the hours of 8:30 a.m. and 5:30 p.m.

5. Pets

- A. Only Unit Owners or their tenants may keep up to a total of two pets (but then only domestic dogs, cats or birds) in the Building without the permission of the Association, and then only so long as the keeping of such pets does not interfere with the rights or convenience of other Unit Owners. No other pets, animals, livestock, or poultry of any kind are allowed.
- B. Unit Owners shall clean and dispose of any pet litter or soiling in the Building. Repeated occurrences of soiling in the common areas shall result in the permanent removal of the offending pet from the building.

6. Individual Units

- A. No group exhibition of any Unit or its contents shall be conducted, nor shall any auction sale be held in a Unit without the consent of the Association.
- B. The agents of the Association, and any contractor or workman authorized by the Association, may enter any unit in any reasonable hour of the day for the purpose of inspecting such Unit to ascertain whether measures are necessary or desirable to control or exterminate any vermin, insects, or other pests and for the purpose of taking such measures as may be necessary to control or exterminate any such vermin, insects, or other pests. If the Association takes measures to control or exterminate any such pests in a Unit, the cost thereof shall be payable by the Unit Owner of that Unit.
- C. Toilets, sinks, bathtubs, showers, dishwashers, washing machines, and other water apparatus in the Units shall not be used for any purposes other than those for which they were constructed. Unit Owners or their tenants shall exercise proper care to insure that floors are kept clear of standing or running water. Running water shall not be left unattended or allowed to overflow any appliance or fixture. All dishwashers, washing machines, and other water-using appliances shall have integral automatic overflow cut-off switches. The cost of repairing any damage resulting from the violation of this rule shall be paid for by the Unit Owner or tenant in whose Unit it shall have been caused.
- D. The Association shall have a pass key to all Units in any Building. No Unit Owner or tenant shall alter any lock or install a new lock without the permission of the Association.
- E. None of the following uses shall be allowed in any Building: pawn shops, gun shops, adult bookstores, adult video stores, strip clubs, pet stores, or any business or use which by its presence in the Buildings can be reasonably demonstrated to diminish the value of the Units.

7. Firearms and Fireworks

- A. No discharge of firearms or fireworks shall be permitted in or from the Buildings or any of the Common Elements.

8. Complaints
 - A. Complaints regarding the maintenance or administration of the Buildings shall be made in writing to the Board of Directors.
9. Security
 - A. Unit Owners or their tenants shall not distribute keys to any of the Buildings or other structures to persons other than family members or other individuals residing in the Condominium. Any Unit Owner or tenant providing keys to any other persons shall inform the Association of the names of such persons.
10. Parking
 - A. The parking areas located on the Condominium property are a Common Element of the Condominium provided for all Unit Owners of the Buildings. Each Unit shall be designated a specific parking space (or spaces) by the Association within one of the interior parking areas in the basement of the Buildings or in the covered parking area. All vehicles improperly parked within any of the parking areas are subject to towing at the owners expenses.
 - B. All Unit Owners agree to comply with any rule and regulation respecting use of the parking areas, as established by the Association. Failure to comply with any of these parking rules, or any such Rules and Regulations established by the Association will subject such Unit Owner to have parking privileges and rights revoked.
11. Consent revocable
 - A. Any consent or approval given under these rules by the Owners shall be revocable at any time.

EXHIBIT D
INTEREST IN COMMON ELEMENTS, SHARE OF LIABILITY
FOR COMMON EXPENSES

UNITS	SQUARE FOOTAGE	INTEREST IN COMMON ELEMENTS AND SHARE OF LIABILITY FOR COMMON EXPENSES
<u>Building A</u>		
Unit 101	805	13.15%
Unit 102	1160	18.96%
Unit 103	1150	18.79%
Unit 201	805	13.15%
Unit 202	1050	17.16%
Unit 203	1150	18.79%
<hr/>		
	6,120	100%

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EXHIBIT E
ADDITIONAL LAND

BEING all of that property described in the deed recorded in Book 4313 at Page 604, LESS AND EXCEPTING that 0.66 acre portion shown as "Phase 1" on a plat entitled "Property Survey for Skyloft Asheville, Phase 1, Skyloft Asheville Condominium" recorded in Plat Book 133 at Page 71, Buncombe County Registry, reference to which is hereby made for a more particular description of said portion.

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