

**BYLAWS  
FOR  
405 South 6th Condominium Association, Inc.**

**ARTICLE I  
NAME AND DEFINITIONS**

**Section 1.1. Name.** The name of the Association shall be 405 South 6th Condominium Association, Inc. (the “Association”).

**Section 1.2. Definitions.** The words and phrases used in these Bylaws shall have the same meaning as set forth in the Articles of Incorporation of 405 South 6th Condominium Association, Inc. (hereinafter “Articles”), and the Declaration of Covenants, Conditions and Restrictions (hereinafter “Declaration”), unless the context otherwise requires.

**Section 1.3. Other Association Documents.** The management and operation of the Association shall be governed by the Articles, the Declaration, and these Bylaws. These Bylaws are to be construed in conjunction with, and to supplement, the recorded Articles and Declaration. In the event of any material discrepancy between the Articles and Declaration and these Bylaws, the express provisions of the Articles and Declaration shall apply.

**ARTICLE II  
MEMBERSHIP AND VOTING**

**Section 2.1. Definition, Rights and Obligations.** Each membership shall be evidenced by the legal title to a Unit or Units, as the case may be.

**Section 2.2. Classes of Membership.** There shall be one (1) class of members and membership: Class A.

- (a) **Class A Membership.** Class A Members shall be all Owners of Units including their respective successors and assigns. Class A Members shall be entitled to vote based on said Owner’s Allocated Interest. When more than one person holds any interest in any Unit, all such persons shall be Members, provided that no more than one (1) vote may be cast with respect to any Unit and no fractional vote may be cast. For the avoidance of doubt, the entirety of a Unit’s Allocated Interest must be voted in one manner, and may not be split for fractional voting.

**Section 2.3. Voting Rights.** Except as specifically provided in these Bylaws, the voting rights of the Members at any meeting of members shall be as follows:

- (a) Each Class A Membership shall be entitled to vote according to its Allocated Interest, as a whole, without fractional voting.

**Section 2.4. Suspension or Termination of Membership.** The membership rights of a Member shall not be suspended so long as the Member continues to hold title to real property in 405 South 6th Condominium, is not in violation of any provision of the Declaration, these Bylaws and any rule or regulation adopted by the Association and is not in arrears in the payment of any assessment.

**Section 2.5. Transfer of Membership.** The membership rights of a Member shall be transferred at such time as the Member conveys the Member's real property in 405 South 6th Condominium to a subsequent owner, who shall thereafter be a Class A member.

**Section 2.6. Voting Certificate.** If a Member is not a natural person, the vote by such Member may be cast by any natural person authorized by such Member. Such natural person must be named, and a certificate signed by an authorized Officer, partner or trustee of such entity and filed with the Secretary; provided, however, that any vote cast by a natural person on behalf of such Member shall be deemed valid unless successfully challenged prior to the adjournment of the meeting at which the vote is cast. Such certificate shall be valid until revoked by a subsequent certificate similarly executed and filed with the Secretary. When the approval or disapproval of a Member is required by the Association documents, such approval or disapproval may be made by any person who would be entitled to cast the vote of such Member at any meeting of the Association.

**Section 2.7. Delinquency.** No Member may vote at any meeting of the Association or be elected to serve on the Board of Directors or be appointed to serve on any committee if payment by such Member of any financial obligation to the Association is delinquent more than sixty (60) days, and the amount necessary to bring the account current has not been paid at the time of such meeting, election or appointment.

**Section 2.8. Manner of Voting.** Voting, except for the election of Directors which shall be by written ballot, by Members at a meeting shall be by voice vote or a show of hands unless any Member present at the meeting requests, and by a majority vote the Members consent to, a vote by written ballot. A majority of the votes of Members entitled to be cast by the Members present or represented by proxy on any matter at a meeting of Members at which a quorum is present shall be the act of the Members on that matter.

**Section 2.9. Proxies.** A Member may vote either in person or by proxy. Proxies shall be in writing, shall be dated, shall be signed by the Member or a person authorized by the Member, or in cases where the Member is more than one person, by or on behalf of all such persons. A proxy shall be valid for twelve (12) months unless a longer period is provided in the proxy and all proxies shall be filed with the Secretary. Such proxies shall be deemed revoked only upon actual receipt of a written revocation by the Secretary or upon actual receipt by a person presiding over the meeting of notice of revocation from the Member.

### **ARTICLE III MEETING OF MEMBERS**

**Section 3.1. Place of Meeting.** All meetings of Members shall be held at the principal office of the Association or at such other place in New Hanover County, North Carolina, as may be determined by the Board of Directors to be convenient to the Members.

**Section 3.2. Annual Meetings.** The first annual meeting of the Association shall be held not later than the first anniversary of the recording of the Declaration in the Office of the Register of Deeds of New Hanover County at such time and place as may be fixed by a resolution of the Board of Directors. Subsequent annual meetings of the Association shall be held at least fifty (50) days prior to the beginning of each fiscal year at such time as may be fixed from time to time by resolution of the Board of Directors.

**Section 3.3. Special Meetings.** The Association shall hold a special meeting: (1) upon the call of the President; (2) if so directed by a resolution by the Board of Directors; or (3) upon a petition presented to the Secretary and signed by Members entitled to cast at least thirty percent (30%) of the total number of votes. The signatures on a petition requesting a special meeting shall be valid for a period of ninety (90) days after the date of the first signature. Such resolution, petition or request must: (1) specify the time and place at which the meeting is to be held, which place must be in New Hanover County, North Carolina; (2) either specify a date on which the meeting is to be held which will permit the Secretary to comply with all notice provisions of this Article or else specify that the Secretary shall designate the date of the meeting; (3) specify the purposes for which the meeting is to be held; and (4) be delivered to the Secretary in writing.

**Section 3.4. Notice of Meetings.** Written notice stating the place, day and time of each annual meeting and, in the case of a special meeting, the purposes for which the meeting is called, shall be given by the Secretary to each Member entitled to vote at such meeting not less than ten (10) nor more than fifty (50) days before the date of the meeting. No business shall be transacted at a special meeting except as stated in the notice. The giving of notice in the manner provided in this Section and Article IX hereof shall be considered service of notice.

**Section 3.5. Waiver of Notice of Meetings.** Whenever any notice is required to be given of any meeting of the Association, a waiver thereof in writing signed by a Member entitled to such notice, whether given before or after the meeting, shall be the equivalent to the giving of such notice to that Member and such waiver shall be delivered to the Secretary.

A Member who attends a meeting shall be conclusively presumed to have received timely and proper notice of the meeting or to have duly waived notice thereof unless such Member attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting was not lawfully called or convened and so notifies the person conducting the meeting at or prior to the commencement of the meeting or at or prior to the consideration of the matter subject to objection in the case of a special meeting.

**Section 3.6. Quorum.** A quorum shall be deemed to be present throughout any meeting of the Association if Members entitled to cast at least forty percent (40%) of the total votes are present, in person or by proxy, at the beginning of such meeting. Once a Member is present at a

meeting such Member is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or shall be set for that adjourned meeting.

If at any meeting of the Association a quorum is not present, a majority of the Members who are present at such meeting in person or by proxy may: (1) recess the meeting to such date, time and place as the Members may agree, not more than forty-eight (48) hours after the time the original meeting was called; or (2) adjourn the meeting to a time not less than forty-eight (48) hours after the time the original meeting was called at such date and place as such Members may agree, whereupon the Secretary shall announce the date, time and place at the meeting and make other reasonable efforts to notify all Members of such date, time and place.

**Section 3.7. Order of Business.** Unless otherwise specified in the notice of the meeting, the order of business at all meetings of the Association shall be as follows: (1) roll call or proof of quorum; (2) proof of notice of meeting; (3) reading of the minutes of the preceding meeting; (4) reports of Officers and management; (5) report of Board of Directors; (6) reports of committees; (7) election of Directors; (8) unfinished business; and (9) new business; provided, however, that the voting for election of Directors may commence at any time at the direction of the presiding Officer.

**Section 3.8. Conduct of Meetings.** The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meetings and record all resolutions adopted at the meetings and proceedings occurring at such meetings. The President may appoint a parliamentarian at any meeting of the Association. The most current edition of Robert’s Rules of Order shall govern the conduct of all meetings of the Association when not in conflict with the Association documents.

**Section 3.9. Record Date to Determine Members and List of Members.** The date for determining which persons are Members and therefore entitled to vote (“Record Date”) shall be the close of business on the day prior to the Secretary providing written notice as prescribed in Section 3.4, unless the Board of Directors shall determine otherwise. The Board of Directors shall not set a Record Date retroactively. At least ten (10) days before each meeting, the Secretary shall make a complete list of Members, with the address of each, available for review by the Members before and during the meeting. The list shall be current as of the Record Date.

**ARTICLE IV  
BOARD OF DIRECTORS**

**Section 4.1. Organization.** The property, affairs, and business of the Association shall be managed by a Board of Directors (collectively herein called “Board”, and each member individually a “Director”). The Board shall be elected by the Members of the Association. The Board shall elect Officers and assistant Officers as provided in Article V and as, from time to time, may be deemed necessary. These Officers shall carry out such functions and duties as are prescribed by these Bylaws and the Board.

**Section 4.2. Number and Term of Office of Directors.** The number of Directors shall be at least three (3). The terms of the Board of Directors elected by the Membership at the first annual meeting shall be staggered as follows: The one (1) nominee receiving the most votes shall be elected for a term of three (3) years, the nominee receiving the next highest number of votes, shall be elected for a term of two (2) years, and the nominee receiving the next highest number of votes shall be elected for a term of one (1) year. Thereafter, each Director shall be elected for a term of three (3) years.

In the event of a tie vote between or among any one or more of the three (3) nominees who received the highest number of votes, the then-serving President of the Association shall determine the procedure for establishing the term of each initial Director elected by the Membership, which determination shall be made immediately during the annual meeting at which the election is held.

**Section 4.3. Election Procedures and Qualifications.** Each Director shall be a Member of the Association or shall be authorized representatives, Officers, or employees of a corporate Member of the Association. No Member or representative of such Member shall be elected as a Director or continue to serve as a Director if such owner is more than sixty (60) days delinquent in meeting any financial obligation owed to the Association.

**Section 4.4. Action by Board of Directors.** At all meetings of the Board of Directors, a majority of the total number of Directors shall constitute a quorum for the transaction of business, and a Majority Vote of the Directors while a quorum is present shall constitute a decision of the Board of Directors unless otherwise provided by the Association documents.

**Section 4.5. Removal or Resignation of Directors.** At any regular or special meeting of the Association any one or more of the Directors may be removed with or without cause by the Members entitled to cast a majority of the total number of votes represented at such meeting. Any Director whose removal has been proposed by the Members shall be given at least ten (10) days' notice of the time, place and purpose of the meeting and shall be given an opportunity to be heard at the meeting. The notice given to Members of such meeting shall state that one of the purposes of the meeting is to remove such Director.

A vacancy caused by a removal of a Director by the Members shall be filled by a vote of the Members and the replacement Director shall serve the remainder of the term of the Director being replaced. The term of the replacement Director shall expire so that the staggered terms shall remain unaffected.

A vacancy among the Directors of the Board of Directors caused by any reason other than the removal of a Director by the Members shall be filled by a Majority vote of the remaining Directors at a meeting of the Board held for such purpose promptly after the occurrence of such vacancy or, if the Directors remaining in office constitute fewer than a quorum, an affirmative vote of the Majority of the Directors remaining in office. The term of the replacement Director shall expire so that the staggered terms shall remain unaffected.

A Director may resign at any time by giving notice to the Board of Directors, the President or the Secretary. Unless otherwise specified, such resignation shall take effect upon the receipt thereof and the acceptance of such resignation shall not be necessary to make it effective. A Director shall be deemed conclusively to have resigned if not in attendance at three (3) consecutive regular meetings of the Board unless the minutes reflect the Board's consent to such absence.

**Section 4.6. Powers and Duties of the Board.** The business and affairs of the Association shall be managed by the Board. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association, including, but not by way of limitation, all powers as set forth in Article 8 of Chapter 55A of the North Carolina General Statutes (Nonprofit Corporation Act) as the same may be amended from time to time, and may do all such acts and things as are not required by the Articles, Declaration or Bylaws to be exercised and done by the Members. The Board shall delegate to one 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, if any, which may arise between meetings of the Board, as the Board deems appropriate. In addition to the duties imposed by any other provision of the Articles or Declaration or by any resolution of the Association that may hereafter be adopted, the Board shall perform the following duties and take the following actions on behalf of the Association:

(a) Provide goods and services to the Members in accordance with the Articles and Declaration, and provide for maintenance, repair and restoration of the Common Areas.

(b) Designate, hire, dismiss and, where appropriate, compensate the personnel necessary to provide for the maintenance, repair and restoration of the Common Areas, and provide goods and services to the Members and Owners, as well as purchase equipment, supplies and materials to be used by such personnel in the performance of their duties.

(c) Collect levied assessments, deposit the proceeds thereof in depositories established and designated by the Board and use the proceeds to carry out the maintenance, repair and restoration of the Association to the extent the Association is so authorized by the Articles and Declaration.

(d) Adopt, amend and repeal any reasonable Rules and Regulations not inconsistent with the Articles and Declaration.

(e) Open bank accounts on behalf of the Association and designate the signatories thereon.

(f) Enforce by legal means the provisions of the Articles, Declaration, Bylaws and the Rules and Regulations.

(g) Act with respect to all matters arising out of any eminent domain proceeding affecting the Common Areas.

(h) 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.

(i) Obtain and carry insurance against casualties and liabilities, pay the premiums therefor and adjust and settle any claims thereunder.

(j) Pay the cost of all authorized goods and services rendered to the Association and not billed to Owners of individual Units or otherwise provided for in the Articles or Declaration.

(k) 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.

(l) Charge reasonable fees for the use of the Common Areas and for services.

(m) Suspend the right of any Owner or other occupant of a Unit, and the right of such person's household, guests, employees, customers, tenants, agents and invitees to use any recreational facilities, areas or amenities located in the Common Areas, as authorized by the Association documents.

(n) Prepare an annual budget in accordance with the Declaration.

(o) Adopt an annual budget and make assessments (general or special) against the Owners to defray the common expenses of the Association, establish the means and methods of collecting such assessments from the Owners and establish the period of the installment payment, if any, of the assessments for common expenses.

(p) Borrow money on behalf of the Association when required for any valid purpose.

(q) Grant easements, rights-of-way or licenses over and through the Common Areas.

(r) Provide for the reimbursement of Officers, Directors, employees and agents of the Association for funds expended in performing the business of the Association, including but not limited to such documented costs as copying, postage, travel mileage, and other such reasonable costs of administration.

(s) The Board shall accept the conveyance of any Stormwater Permit issued for the Property as issued by the Division of Water Quality provided that the Permit is transferable under applicable state regulations for transfer of stormwater permits.

#### **Section 4.7. Meeting of Board.**

(a) **Types of Meetings.** The first (organizational) meeting of the Board following an annual meeting of the Association shall be held within fifteen (15) days thereafter at such time and place as shall be determined by a Majority of the Board to elect Officers and establish the manner of operation of the Board for the ensuing year. Regular meetings of the Board may be held at such

time and place as shall be determined from time to time by a Majority of the Board; provided, however, such meetings shall be held at least quarterly during each fiscal year. Special meetings of the Board may be called by the President and shall be called by the President or Secretary upon the written request of at least one (1) Director. All meetings of the Board shall be open to Owners as observers, except that the President or presiding Officer may call the Board into executive session on sensitive matters such as personnel, litigation strategy or hearings with respect to violations of the Articles, Declaration or Rules and Regulations. Any final action taken by the Board in executive session shall be recorded in the minutes.

(b) **Notice.** Notice of meetings of the Board shall be given to each Director, personally or by mail, facsimile, email or telephone, orally or in writing, at least three (3) business days prior to the day named for such meeting. Such notice shall state the place, day and time and, in the case of special meetings, the purpose thereof. No notice of the organizational meeting shall be necessary if such meeting is held immediately following the annual meeting.

(c) **Waiver of Notice.** Any Director may at any time, in writing, waive notice of any meeting of the Board, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice by such Director of the time, place and purpose of such meeting, unless such Director attends for the express purpose of objecting to the transaction of any business on the grounds that the meeting was not lawfully called or convened and so notifies the person conducting the meeting at or prior to the commencement of the meeting or at or prior to consideration of the matter subject to objection, in the case of a special meeting. If all Directors are present at any meeting of the Board, no notice shall be required, and any business may be transacted at such meeting.

(d) **Quorum of Board.** At all meetings of the Board, a Majority of the total number of Directors shall constitute a quorum for the transaction of business, and a Majority Vote of the Directors while a quorum is present shall constitute the decision of the Board, unless provided otherwise in the Articles or Declaration. If at any meeting of the Board there shall be less than a quorum present, a Majority of the Directors present may adjourn or recess the meeting from time to time. At any such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice. A Director who participates in a meeting by any means of communication by which all Directors may simultaneously hear each other during the meeting shall be deemed present at the meeting for all purposes.

(e) **Conduct of Meeting.** The President shall preside over meetings of the Board and the Secretary shall keep the minutes of the meeting and record all resolutions adopted at the meetings and proceedings occurring at the meetings. The then current edition of Robert's Rules of Order shall govern the conduct of the meetings of the Board.

**Section 4.8. Action by Board Without Meeting.** Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if a consent in writing setting forth the action taken shall be signed either before or after such action is taken by all the Directors.

Any such written consents shall have the same force and effect as a unanimous vote and shall be filed with the minutes of the Board.

**Section 4.9. Hearing Procedure.** Except as authorized and permitted by the Declaration, the Board shall not impose a fine or penalty, undertake permitted remedial action, suspend voting or infringe upon other rights of a Member or occupant of a Unit for violations of the Articles, Declaration and Rules and Regulations unless and until the following procedure is followed:

(a) **Demand.** Written demand to cease and desist from an alleged violation shall be served upon the alleged violator specifying (i) the alleged violation; (ii) the action required to abate the violation; and (iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction if the violation is a continuing one, or a statement that any further violation may result in the imposition of a sanction after notice and hearing if the violation is not continuing.

(b) **Notice.** At any time within twelve (12) months following such demand, if the violation continues past the period allowed in the demand for abatement without penalty or if the same rule is subsequently violated, the Board or its delegate shall serve the alleged violator with a written notice of a hearing to be held by the Board in executive session. The notice shall contain: (i) the nature of the alleged violation; (ii) the time and place of the hearing, which shall not be less than ten (10) days from the giving of the notice; (iii) an invitation to attend the meeting and produce any statement, evidence and witness on the alleged violator's behalf; and (iv) the proposed sanction to be imposed. The notice prescribed herein may be served by mailing a copy of said notice to the alleged violator by placing said notice in the United States Mail, postage prepaid, by any method as permitted for the service of summons as set forth in Rule 4 of the North Carolina Rules of Civil Procedure or by the delivery of said notice by any Officer, Director or agent of the Association to the alleged violator or to any person who may be served on the alleged violator's behalf as provided in said Rule 4.

(c) **Hearing.** The hearing shall be held in executive session of the Board pursuant to the notice affording the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the Officer, Director or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

## **ARTICLE V OFFICERS**

**Section 5.1. Designation and Duties of Office.** The principal Officers of the Association shall be the President (who shall also serve as Chairman of the Board), the Vice President, and the Secretary/Treasurer, each of whom shall be elected by the Board (collectively,

the “Officers” and individually, an “Officer”). The Board may also elect a Vice President, an Assistant Treasurer, an Assistant Secretary and such other Officers as in its judgment may be necessary. 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 Articles, Declaration and these Bylaws, and shall perform such other duties as may be assigned to such office by resolution of the Board. If any Officer is unable for any reason to perform the duties of the office, the President (or the Board, 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.** The Officers of the Association shall be elected annually by the Board at the organizational meeting of each new Board and shall hold office at the pleasure of the Board. Any Officer may hold more than one position; provided, however, that the offices of President and Secretary or Assistant Secretary shall not be held by the same person.

**Section 5.3. Resignation or Removal of Office.** Any Officer may resign by delivering written notice to the Board. Unless otherwise specified, such resignation shall take effect upon the receipt thereof, and acceptance of such resignation shall not be necessary to make it effective. Upon the affirmative vote of a Majority of all members of the Board, 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 5.4. Vacancies.** A vacancy in any office may be filled by appointment by the Board. The person appointed to fill a vacancy shall serve for the remainder of the term of the Officer such person replaces.

**Section 5.5. 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 to the execution of the resolutions of the Association and the Board; see that all orders and resolutions of the Board are carried into effect; and, in general, perform all the duties incident to the office of President.

**Section 5.6. Vice President.** The Vice President shall take the place of the President and perform the duties of the President whenever the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board 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 or by the President.

**Section 5.7. Secretary.** The Secretary shall keep the minutes of all meetings of the Association and of the Board; have charge of such books and papers as the Board may direct and as may be required by Article 8 of Chapter 55A of the General Statutes of North Carolina; give or cause to be given all notices required to be given by the Association; give each Member notice of each assessment against such Member’s Unit as soon as practicable after assessment is made; provide for each Member, upon request, notice of and a copy of the Rules and Regulations or amendments thereof; maintain a register setting forth the place to which to direct all notices to individual Members; make it possible for any Member to inspect and copy at reasonable times and

by appointment the records of the Association; and, in general, perform all the duties incident to the office of Secretary.

**Section 5.8. Treasurer.** The Treasurer shall 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 Association, 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.

## **ARTICLE VI COMMITTEES**

**Section 6.1. Committees.** The Board may create and abolish committees from time to time consisting of three (3) or more persons, as the Board may deem appropriate to aid in the administration of the affairs of the Association. Such committees shall have the powers and duties fixed by resolution of the Board from time to time. The Board shall appoint the chair of each committee and may either appoint the other members thereof or leave such appointment to the committee chair.

**Section 6.2. Action by Committee Without Meeting.** Any action required or permitted to be taken without a meeting if consented to in writing, setting forth the action taken, shall be signed either before or after such action by all of the members of the committee. Any such written consent shall have the same force and effect as a unanimous vote and shall be filed with the minutes of the committee.

## **ARTICLE VII FIDUCIARY DUTIES**

**Section 7.1. Execution of Documents.** Unless otherwise provided in the resolution of the Board, all agreements, contracts, deeds, leases, checks and other instruments of the Association for expenditures or obligations for common expenses and all checks drawn upon reserve accounts, shall be executed by any one (1) person designated by the Board. Any Officer of the Association may be designated by Board resolution to sign a Statement of Common Expenses on behalf of the Association.

### **Section 7.2. Conflicts of Interest.**

(a) **Rules and Exceptions.** Each Director or Officer shall exercise such Director's or Officer's powers and duties in good faith in the best interests of the Association. No contract or other transaction between the Association and any of its Directors or Officers, or between the Association and any corporation, firm or association (including the Declarant and Developer) in which any of the Directors or Officers of the Association are directors or officers or are pecuniary or otherwise interested, is either void or voidable because of such relationship or because any such Director or Officer is present at the meeting of the Board or any committee thereof which authorizes or approves the contract or transaction or because such Director's or Officer's vote is

counted for such purpose if any of the following conditions exist: (1) the material facts of the transaction and the common directorate or interest are disclosed or known to the Board or a majority thereof, and the Board authorizes, approves or ratifies such contract or transaction in good faith by a majority of Directors entitled to vote on the transaction, but in no event may such transaction be authorized, approved or ratified by a single Director; (2) the material facts of the transaction and the common directorate or interest is disclosed or known to all of the Members entitled to vote on the matter, and the Members who are entitled to be counted in a vote on the transaction approve or ratify the contract or transaction by a majority of the total number of votes entitled to be cast; or (3) the contract or transaction is commercially reasonable to the Association in view of all the facts known to any Director or Officer at the time such contract or transaction is authorized, ratified, approved or executed.

(b) **Vote Not Counted.** Interested Directors and Officers may be counted in determining the presence of a quorum of any meeting of the Board, a committee thereof, or the Members which authorizes, approves or ratifies any contract or transaction, but such Director's or Officer's vote shall not be counted with respect to any matter as to which such Director or Officer would have a conflict of interest; such Director or Officer may vote, however, at the meeting to authorize any other contract or transaction.

### **Section 7.3. Liability and Indemnification.**

(a) **No Personal Liability.** The Directors, Officers and members of committees 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. Directors and Officers shall have no personal liability with respect to any contract made by them on behalf of the Association. No Member or Owner shall be liable for the contract or tort liability of the Association by reason of ownership or membership therein. Every agreement made by the Board, the Officers or the managing agent on behalf of the Association shall, if obtainable, provide that the Directors, the Officers or the managing agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder.

(b) **Indemnification.** The Association shall indemnify the Directors, Officers and members of committees to the extent that it is contemplated a nonprofit corporation may indemnify its directors, officers and employees pursuant to Article 8 of Chapter 55A of the General Statutes of North Carolina.

(c) **Directors and Officers Liability Insurance.** The Association shall have the power, pursuant to the Declaration, to purchase and maintain insurance on behalf of any person who is or was a Director, an Officer, a member of a committee and the managing agent, if any, against any liability asserted against such person and incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against such liability under the provisions of this section. Further, the availability of the Association's indemnity shall not relieve any insurer of any liability under an insurance policy held by the Association.

**Section 7.4. Compensation of Directors and Officers.** No salary or other compensation shall be paid by the Association to any Director or Officer of the Association for serving or acting as such, but this shall not preclude the payment of salary or other compensation for the performance by such Director or Officer of other services to the Association nor shall it preclude the reimbursement of reasonable, ordinary and necessary expenses incurred in serving or acting as a Director or Officer.

## **ARTICLE VIII BOOKS AND RECORDS**

**Section 8.1. Maintenance.** The Association shall keep books and records as required by Article 16 of Chapter 55A of the General Statutes of North Carolina. All books and records shall be kept in accordance with generally accepted accounting principles. Additionally, the Association shall cause to be adopted procedures for an annual review of the financial status of the Association by an auditor retained by the Board, who shall not be a Member, Director or Officer. The cost of such review shall be a common expense of the Association.

**Section 8.2. Availability.** The books and records of the Association shall be available for examination by the Members, the Owners, their attorneys, accountants, Mortgagees and authorized agents during general business hours on business days at the times and in the manner established by the Board for the general knowledge of the Owners. The list of Members required by Section 3.9 hereof shall be available for inspection for a period of ten (10) days prior to the meeting and at the meeting. All Mortgagees or their representatives shall have the right to examine the books and records of the Association on the same terms and conditions as the Members. The Board may fix from time to time a reasonable charge to cover the direct and indirect costs of providing any documents to a party entitled to said documents hereunder.

**Section 8.3. Accounting Report.** Within one hundred twenty (120) days after the end of each fiscal year, the Board shall make available to Members 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 for such fiscal year, and showing the net amount over or short of the actual expenditures plus reserves.

**Section 8.4. Fiscal Year.** The first fiscal year of the Association shall begin on the date of incorporation and end on the last day of December, unless otherwise determined by the Board. Fiscal years thereafter shall be the same as the calendar years.

## **ARTICLE IX NOTICES**

Except as specifically provided otherwise in the Articles, Declaration or these Bylaws, all notices, demands, bills, statements or other communications shall be in writing and shall be deemed to have been duly given if delivered personally or sent by United States mail, postage prepaid, or if notification is of a default or lien, sent by registered or certified United States mail, return receipt requested, postage prepaid: (1) if to a Member, at the address which the Member

shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the Unit of such Member; (2) if to the Association, the Board or to the managing agent, at the principal office of the managing agent or at such other address as shall be designated by notice in writing to the Owners pursuant to this section; or (3) if to a Mortgagee, at the address indicated by the Mortgagee in a written notice to the Association.

## **ARTICLE X AMENDMENTS**

These Bylaws may be amended as more particularly set forth in Part 2 of Article 10 of Chapter 55A of the General Statutes of North Carolina.

## **ARTICLE XI CONFLICTS**

In the event that the provisions of these Bylaws conflict with the provisions of Chapter 55A of the General Statutes of North Carolina, the provisions of Chapter 55A shall control.

**405 South 6th Condominium Association, Inc.**  
By: RCG 405 South, LLC

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By:  
Manager