

BY-LAWS

OF

KINDERTON (COMMERCIAL VILLAGE CORE, PHASES 1, 2, and 3)
PROPERTY OWNERS ASSOCIATION, INC.

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Article I
Name, Principal Office, and Definitions

Section 1. Name. The name of the corporation is KINDERTON (COMMERCIAL VILLAGE CORE, PHASES 1, 2, and 3) PROPERTY OWNERS ASSOCIATION, INC., (herein referred to as the “Association”).

Section 2. Principal Office. The principal office of the Association in the State of North Carolina shall be located at 130 N.C. Highway 801 South, Advance, Davie County, North Carolina. The Association may have such other offices, either within or outside the State of North Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in the Declaration of Covenants, Conditions, and Restrictions for Kinderton (Commercial Village Core, Phases 1, 2 and 3). The Declaration, as amended, renewed, or extended from time to time, is herein referred to as the “Declaration”, unless the context requires otherwise.

Article II
Association: Membership, Meetings, Quorum, Voting, Proxies

Section 1. Membership. The Association shall have two classes of membership, Class “A” and Class “B”, as provided in Article III of the Declaration.

Section 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable and convenient place as may be designated by the Board of Directors (herein sometimes referred to as the “Board”).

Section 3. Annual Meetings. The first meeting of the Association will be held within one year from the date of incorporation of the Association. The date and time of subsequent regular annual meetings shall be set by the Board. Meetings shall be of the Voting Members or their alternates.

Section 4. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution

of a majority of a quorum of the Board of Directors or upon a petition signed by Voting Members representing at least ten percent of the total eligible Voting Members of the Association. No business shall be transacted at a special meeting except as stated in the written notice.

Section 5. Notice of Meetings. Written notice stating the place, day, and hour of any meeting of the Voting Members shall be delivered, either personally or by mail, to each Voting Member entitled to vote at such meeting, not less than ten nor more than fifty days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Voting Member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 6. Waiver of Notice. Waiver of notice of a meeting of the Voting Members shall be deemed the equivalent of proper notice. Any Voting Member may, in writing, waive notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Voting Member shall be deemed a waiver by the Voting Member of notice of the time, date, and place thereof, unless such Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 7. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Voting Members who are present at the meeting may adjourn the meeting to a time not less than five nor more than thirty days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings.

The Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of Voting Members leaving less than a quorum, provided that any action taken is approved by at least a majority of the Members required to constitute a quorum.

Section 8. Voting. The voting rights of the Members are as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

Section 9. Proxies. Voting Members may not vote by proxy but only in person or through their designated alternates.

Section 10. Majority. As used in these By-Laws, the term “majority” shall mean those votes totaling more than fifty percent of the total number of votes cast on a matter.

Section 11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by alternate of the Voting Members representing a majority of the total eligible vote of the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

Section 12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

Section 13. Action Without A Meeting. Any action required by law to be taken at a meeting of the Voting Members, or any action which may be taken at a meeting of the Voting Members, may be taken without a meeting if written consent setting forth the action so taken is signed by all of the Voting Members entitled to vote with respect to the subject matter thereof, and any such consent shall have the same force and effect as a unanimous vote of the Voting Members.

Article III **Board of Directors: Number, Powers, Meetings**

A. Composition and Selection.

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by its Board of Directors, each of whom shall have one vote. Except with respect to Directors appointed by the Class “B” Member, the Directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time. In the case of an Owner which is a corporation, limited liability company, or partnership, the person designated in writing to the secretary of the Association as the representative of such entity shall be eligible to serve as a director.

Section 2. Directors During Class “B” Control Period. The Class “B” Member is entitled to appoint a two-thirds (2\3) majority of the members of the Board of Directors during the Class”B” Control Period. Failure of the Class “B” Member to exercise such power within thirty (30) days of the opening of such a position constitutes a waiver of that power entitling the Class “A” Members to exercise such power. The Class “B” Control Period is set forth in Article III, Section 3 of the Declaration.

Section 3. Right to Disapprove Actions. So long as the Class “B” membership exists, the Class “B” Member shall have a right to disapprove actions of the Board and any committee. The Class “B” Member shall not act unreasonably in exercising the right of disapproval. This right shall be exercisable only by the Class “B” Member, its successors, and assigns who specifically take this power in a recorded instrument. This *Section 3* may not be amended without the express, written consent of the Class “B” Member as long as the Class “B” membership exists.

Section 4. Number of Directors. The initial Board shall consist of three members as identified in the Articles of Incorporation. After the term of the initial Board, the number of Directors may be increased by the Board to not more than seven members.

Section 5. Nomination of Directors. Except with respect to Directors selected by the Class “B” Member, nominations for election to the Board of Directors shall be made by a Nominating Committee appointed by the Board from Class “A” Members. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and three or more Members of the Association. The Nominating Committee shall be appointed by the Board not less than thirty days prior to each annual meeting of the Voting Members to serve a term of one year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. Nominations for Directors to be elected by the Voting Members shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Voting Members and to solicit votes.

Section 6. Election and Term of Office. Elections for those Board members not appointed by the Class “B” Member shall be held at the regular annual meeting of the Association. The term of office shall be one year. Directors may be elected to serve any number of consecutive terms. If the Board is increased to five or more Directors, the Board may establish longer and staggered terms of office.

Each Voting Member shall be entitled to cast one vote for each Lot owned for as many candidates for the Board as there are positions to be filled. There shall be no cumulative voting. The candidates who receive the highest number of votes equaling the positions to be filled shall be declared elected.

Section 7. Removal of Directors and Vacancies. Any director elected by the Voting Members may be removed, with or without cause, by the vote of Voting Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall then and there be elected by the Voting Members to fill the vacancy for the remainder of the term of such director.

Any director elected by the Voting Members who has three consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than thirty days may be removed by a majority of the Directors present at a

regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a director, a vacancy may be declared by the Board, and it may appoint a successor. In the event the vacant position was held by a Class “A” Member, the director appointed by the Board to fill the vacancy shall be a Class “A” Member.

B. Meetings.

Section 8. Organizational Meetings. The first meeting of the Board of Directors following each annual meeting of the membership shall be held within ten days thereafter at such time and place as shall be fixed by the Board.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the Directors. Notice of the time and place of the meeting shall be communicated to the Directors not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to the holding of the meeting.

Section 10. Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President of the Association or by a majority of the Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director at least 24 hours before the meeting by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) by fax or e-mail.

Section 11. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or whenever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 12. Quorum of Board of Directors. At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action is taken approved by at least a majority of the Directors remaining at the meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the Directors who are present at such meeting may adjourn the meeting to a time not less than five nor more than thirty days from the date of the

original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 13. Compensation. No director shall receive any compensation from the Association. A director may be reimbursed for expenses incurred on behalf of the Association upon approval by a majority of the other Directors.

Section 14. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book of meetings of the Board of Directors, recording therein all resolutions adopted by the Board of Directors and all transactions and proceedings occurring at such meetings.

Section 15. Open Meetings. Subject to the provisions of Section 16 of this Article, all meetings of the Board shall be open to all Voting Members, but Voting Members other than Directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any Voting Member may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, excluding the Voting Members, to discuss matters of a sensitive nature, such as pending or threatening litigation, personnel matters, etc.

Section 16. Action Without a Formal Meeting. Any action that may be taken at a meeting of the Directors may also be taken without a meeting if consent in writing, setting forth the action so taken, is signed by a majority of the Directors, and such consent shall have the same force and effect as a majority vote.

C. Powers and Duties.

Section 17. Powers. The Board shall be responsible for the affairs of the Association. The Board shall have all of the powers necessary for the administration of the Association's affairs. The Board shall have all duties imposed upon it under the Declaration and all powers necessary to carry out those duties.

Section 18. Management. The Board of Directors may employ for the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Board of Directors may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these By-Laws. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

Section 19. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;
- (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;
- (f) commencing at the end of the month in which the first Lot is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:
 - (i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;
 - (ii) a statement reflecting all cash receipts and disbursements for the preceding period;
 - (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
 - (iv) a balance sheet as of the last day of the preceding period; and
 - (v) a delinquency report listing all Owners who are delinquent in paying assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent on the fifteenth day following the due date unless otherwise determined by the Board of Directors, and
- (g) an annual report consisting of at least the following shall be distributed to all Members within one hundred twenty days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. The annual report referred to above shall be prepared on an un-audited or reviewed basis, as determined by the Board, by an independent public accountant.

During the Class “B” Control Period, the annual report shall include certified financial statements.

Section 20. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, or restoration of the Area of Common Responsibility without the approval of the Voting Members of the Association. The Board shall also have the power to borrow money for other purposes; provided, the Board shall obtain Voting Member approval in the same manner provided in Article X, Section 3 of the Declaration for special assessments in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities and the total amount of such borrowing exceeds or would exceed five percent of the budgeted gross expenses of the Association for that fiscal year. Notwithstanding anything to the contrary contained in the Declaration, these By-Laws, or the Articles of Incorporation, during the Class “B” Control Period, no Deed of Trust or Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Voting Members representing at least fifty-one percent of the Members other than the Declarant and the consent of the Declarant.

Section 21. Rights of the Association. With respect to the Area of Common Responsibility, and in accordance with the Articles of Incorporation and the Declaration, the Association shall have the right to contract with any person for the performance of various duties and functions.

Section 22. Enforcement. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote or any person's right to use the Common Area for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Lot. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten days within which the alleged violator may present a written request to the Board for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested within the allotted ten day period, the hearing shall be held in executive session affording the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice 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. The Board of Directors may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these By-Laws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

After complying with the procedures set forth in this Section 22, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Area to abate or remove, using such force as may be reasonably necessary, any structure, thing, or condition which violates the Declaration, these By-Laws, or the rules and regulations. All costs of self-help, including reasonable attorney fees, shall be assessed against the violating Owner as a Special Assessment.

Article IV **Officers**

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Board. The Board of Directors may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Voting Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board of Directors whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 5. Resignation. Any office may resign at any time by given written notice to the Board of Directors, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by resolution of the Board of Directors.

Article V **Committees**

Section 1. General. The Board may establish such Committees as it deems appropriate. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the Directors present at a meeting in which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

Article VI **Miscellaneous**

Section 1. Fiscal Year. The fiscal year of the Association shall be set by resolution of the Board of Directors. In the absence of a resolution, the fiscal year shall be the calendar year.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with North Carolina law, the Articles of Incorporation, the Declaration, or these By-Laws.

Section 3. Conflicts. If there are conflicts between the provisions of North Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of North Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws, in that order, shall prevail.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the rules and regulations of the Association, the membership register, books of accounts, and the minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any holder, insurer, or guarantor of a first Deed of Trust on a Lot, Member of the Association, or by the duly appointed representative of the foregoing, at any reasonable time and for a purpose reasonably related to his or her interest in the Lot at the office of the Association or at such other place within the Properties as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

(i) notice to be given to the custodian of the records;

(ii) hours and days of the week when such an inspection may be made; and

(iii) payment of the cost of reproducing copies of documents requested.

(c) Inspections by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extracts and a copy of relevant documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid:

(a) if to a Member or Voting member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Member's Lot; or

(b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

Section 6. Amendment. Until the expiration of the Class "B" Control Period, the Declarant may amend this Declaration for any reason.

In addition, except as otherwise specifically set forth above or elsewhere in these By-Laws, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing seventy-five percent of the total Class "A" votes in the Association and the consent of the Class "B" Member, so long as such Class "B" membership exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public registry of Davie County, North Carolina.

If an Voting Member consents to any amendment to these By-Laws, it will be conclusively presumed that such Voting Member has the authority so to consent and no contrary provision in any Deed of Trust or contract between the Voting Member and a third party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant or the assignee of such right or privilege.

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of KINDERTON (COMMERCIAL VILLAGE CORE, PHASES 1, 2, and 3) PROPERTY OWNERS ASSOCIATION, INC, a North Carolina corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the ____ day of _____, 1999.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal for the Association this ____ day of _____, 1999.

(CORPORATE SEAL)

Secretary

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mvsr: 12356.4

Revised Jan. 5, 99