

THE HISTORIC PRESERVATION SOCIETY OF DURHAM, INC.

AMENDED AND RESTATED BYLAWS

ARTICLE I

Offices

Section 1.1. **Principal Office.** The principal office of the Historic Preservation Society of Durham, Inc. (“Preservation Durham”) shall be located in the County of Durham, State of North Carolina, or such other locations as may be established by the Board of Directors of Preservation Durham (the “Board” or “Board of Directors”).

Section 1.2. **Registered Office.** The registered office of Preservation Durham required by law to be maintained in the State of North Carolina may be, but need not be, identical with the principal office, and the address of the registered office may be changed from time to time as provided in the Act.

Section 1.3. **Other Offices.** Preservation Durham may have offices at such other places, either within or without the State of North Carolina, as the Board of Directors from time to time may determine or as the affairs of Preservation Durham may require.

ARTICLE II

Meetings of Members

Section 2.1. **Place of Meetings.** All meetings of members shall be held at the principal office of Preservation Durham or at such other place, either within or without the State of North Carolina, as shall be designated by the Board of Directors or, upon the failure of the Board to make such designation, by the President, and set forth in the notice of the meeting.

Section 2.2. **Annual Meeting.** The annual meeting of members shall be held at the designated location during the month of May or June of each year and at a date and an hour fixed by the Board of Directors for the purpose of the election of the Board by the members of Preservation Durham and for the transaction of such other business as may be properly brought before the meeting.

Section 2.3. **Substitute Annual Meeting.** If the annual meeting shall not be held during the period established in Section 2.2, a substitute annual meeting may be called in accordance with the provisions of Section 2.4 or as provided by the Act. A meeting so called shall be designated and treated for all purposes as the annual meeting.

Section 2.4. **Special Meetings.** Special meetings of the members may be called at any time by the President or a majority of the Board of Directors of Preservation Durham.

Section 2.5. **Notice of Meetings.** Written or printed notice stating the time and place of any meeting of members shall be delivered no fewer than ten (10), or, if notice is mailed by other than first class, registered or certified mail, no fewer than thirty (30), nor more than sixty (60) days before the

meeting date before the date thereof, either personally, by mail, or by publication in a periodical to all members of record, mailed by or at the direction of the President, or such other person calling the meeting, to each member of record entitled to vote at such meeting and each other person specifically entitled to receive such notice under the Act. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member's address as it appears on the record of the members of Preservation Durham with postage thereon prepaid. The notice of meeting shall state the purpose for which the meeting is called.

Unless a meeting is adjourned (a) to set a new date, time or place, and such new date, time or place is not announced at the meeting prior to adjournment or (b) to a date more than 120 days after the date fixed for the original meeting, notice of the adjourned meeting need not be given.

Section 2.6. **Voting List and Record Date.** The Secretary of Preservation Durham shall prepare an alphabetical list of the members entitled to vote at each meeting, or any adjournment thereof, with the address of each member, which list shall be kept on file at the principal office of Preservation Durham for a period beginning two (2) business days after notice of such meeting is given and continuing through such meeting. Such list shall be subject to inspection and copying (at the member's expense), during the time it is kept on file under the provisions of the preceding sentence, by any member of Preservation Durham at any time during regular business hours. This list shall also be produced and kept open at the time and place of the meeting and shall be subject to inspection by any member at any time during the meeting or any adjournment.

The Board of Directors shall establish a record date for each meeting of members, and only members in good standing as of such record date shall be entitled to vote at such meeting. The Board may establish such procedures and rules for the determination of the good standing of members as it may deem reasonable and necessary.

Section 2.7. **Quorum.** The presence of members represented in person or by proxy, entitled to cast ten percent (10%) or more of the votes entitled to be cast by all members in the election of directors or twenty-five members, whichever is less, shall constitute a quorum for action at an annual, substitute annual or special meeting. If there is no quorum at the opening of a meeting of members, such meeting may be adjourned from time to time by the vote of a majority of the members voting on the motion to adjourn; and, at any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the original meeting. Once a member is represented for any purpose at a meeting, he or she is deemed present for the remainder of the meeting and any adjournment thereof unless a new record is or, under the Act, must be set for that adjourned meeting.

Section 2.8. **Voting Rights.** Subject to the Articles, each member shall be entitled to one vote in the election of each director to be elected at a meeting of members.

The President and the Secretary of Preservation Durham are authorized to establish all reasonable and necessary procedures to permit the casting of votes by members. The determination of whether acceptable evidence has been presented by a person or entity to establish his, her or its authority to vote shall be made by the President, and his or her decision shall be final.

Section 2.9. **Presiding Officer.** The President shall preside at the members' meetings, or in the President's absence, the Vice President or another officer designated by the Board. The Secretary or, in the absence of the Secretary, any person designated by the President shall act as secretary of such meetings.

Section 2.10. **Inspectors of Election.** At each meeting of the members the proxies shall be received and be taken in charge, and all questions touching qualifications of members or the validity of proxies, the presence of a quorum, the acceptance of votes and the results of member votes shall be decided, by voting inspectors who shall act in accordance with the Act. Such voting inspectors (who may not be nominees for election as directors at such meeting) shall be appointed prior to the meeting by the President.

ARTICLE III

Directors

Section 3.1. **General Powers.** All corporate powers shall be exercised by and under the authority of, and the business and affairs of Preservation Durham shall be managed under the direction of, the Board of Directors.

Section 3.2. **Number and Qualifications.** The number of directors of Preservation Durham shall be set by the Board of Directors from time to time; provided, however, that a decrease in the number of directors shall not shorten the term of any director in office at the time of such decrease.

Section 3.3. **Terms of Directors.** Each member of the Board of Directors shall serve for the longer of a term of three (3) years or until a successor is qualified. Terms shall be staggered. Successors to Directors whose terms have expired shall be elected at each annual meeting. No director shall serve more than two (2) consecutive three (3) year terms; provided, however, that anyone appointed as a director to fill a vacancy shall be permitted to serve two (2) full consecutive terms if duly elected at the next meeting of the members. Former directors may be re-elected to the Board of Directors after one (1) full year off the Board. Those persons whose terms would have expired, but who have been elected to an office, shall be permitted to serve on the Board as long as they are in office.

Section 3.4. **Nomination and Election of Directors.** Nominations of persons for election as directors to the Board of Directors of Preservation Durham at a meeting of the members held to elect directors may be made by or at the direction of the Board of Directors or may be made at such members' meeting by any member of Preservation Durham entitled to vote for the election of directors at such meeting who complies with the notice procedures set forth in this Section 3.4.

Nominations made by members shall be made pursuant to timely notice in writing to the Secretary of Preservation Durham. To be timely, a member's notice must be received at the principal office of Preservation Durham not less than fifty (50) days nor more than seventy-five (75) days prior to the annual meeting. Such member's notice to the Secretary shall set forth, as to each person whom the member proposes to nominate for election as a director, (i) the name, age, business address and residence address of the person, and (ii) the principal occupation or employment of the person. Preservation Durham may require any proposed nominee to furnish such other information as may reasonably be

required by Preservation Durham to determine the eligibility of such proposed nominee to serve as a director of Preservation Durham. No person shall be eligible for election as a director of Preservation Durham at an annual meeting unless nominated in accordance with the procedures set forth herein. The President shall, if the facts warrant, determine and declare to the members' meeting that a nomination was not made in accordance with the foregoing procedure and, accordingly, shall be disregarded.

Each director shall be elected at the applicable annual meeting of the members, and those persons who receive a plurality of the votes cast by the members entitled to vote in the election of directors at such meeting shall be deemed to have been elected.

Section 3.5. **Cumulative Voting.** No member shall have the right to cumulate his or her votes in the election of directors.

Section 3.6. **Removal.** Any director may be removed from office with or without cause by a vote of a majority of all of the members or by an affirmative vote of a majority of the Board of Directors present and voting at a meeting of the Board of Directors. A director may not be removed by the members at a meeting unless the notice of such meeting states that the purpose, or one of the purposes, of the meeting is removal of the director.

Section 3.7. **Vacancies.** A vacancy occurring in the Board of Directors may be filled by a vote of the majority of the remaining directors, though less than a quorum, or by the sole remaining director. A director elected or appointed to fill a vacancy shall serve until the next meeting of members at which directors are elected.

ARTICLE IV

Meetings of Directors

Section 4.1. **Regular Meetings.** The Board of Directors may provide, by resolution, the time and place, either within or without the State of North Carolina for the holding of regular meetings. Unless otherwise provided by the Board of Directors, the Board shall meet at least as often as once each fiscal quarter, on the dates and at the time established as customary by the Board of Directors.

Section 4.2. **Special Meetings.** Special meetings of the Board of Directors may be called by or at the request of the President or any three (3) directors. Such meetings may be held either within or without the State of North Carolina as fixed by the person or persons calling any such meeting.

Section 4.3. **Notice of Meetings.** When held on the dates and at the time established as customary by the Board of Directors, regular meetings of the Board of Directors may be held without notice. The person or persons calling a special meeting, give notice thereof by telephone, telegraph, teletype or other form of direct wire, wireless or electronic communication, including email, facsimile communication, or by written communication delivered by hand, United States mail, or private carrier. Written notice of a special meeting of the directors is effective at the earliest of the following: (a) when received; (b) upon its deposit in the United States mail, as evidenced by the postmark, if mailed by first class mail, with postage thereon prepaid, and correctly addressed; (c) upon transmission if sent by facsimile and if completed transmission is evidenced by a sender's confirmation report generated by the

sender's facsimile machine; or (d) on the date shown on the confirmation of delivery issued by a private carrier, if sent by private carrier to the address of the director last known to Preservation Durham. Oral notice is effective when actually communicated to the director. Notice of an adjourned meeting of directors need not be given if the time and place are fixed at the meeting adjourning and if the period of adjournment does not exceed ten (10) days in any one adjournment. Such notice need not specify the purpose for which the meeting is called. Special meetings may be held without notice upon the unanimous consent of the directors.

Section 4.4. **Waiver of Notice.** Any director may waive notice of any meeting by filing a written and signed waiver with the minutes of the meeting or in Preservation Durham's corporate records. A director's attendance at or participation in a meeting shall constitute a waiver of notice of such meeting, unless the director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting any business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

Section 4.5. **Quorum.** The presence of a majority of the number of directors prescribed by the Board of Directors under Section 3.2 and in office immediately prior to a meeting shall constitute a quorum for the transaction of business at that meeting of the Board; provided, however, that if a quorum is not present, a majority of the present directors may adjourn the meeting from time to time without further notice except as provided in Section 4.3.

Section 4.6. **Manner of Acting.** Except as otherwise provided in these Bylaws or the Act, the act of the majority of the directors attending or participating in a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 4.7. **Presumption of Assent.** A director of Preservation Durham who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless (a) the director objects at the beginning of the meeting (or promptly upon the director's arrival) to holding such meeting or transacting business at it, (b) the director shall file a written dissent or abstention to such action with the presiding officer of the meeting before the adjournment thereof or with Preservation Durham immediately after the adjournment of the meeting, or (c) the director's contrary vote or abstention is entered in the minutes of the meeting. Such right to dissent or abstain shall not apply to a director who voted in favor of such action.

Section 4.8. **Informal Action by Directors.** Action taken by the directors without a meeting is nevertheless Board action, and may be described as such, if one or more written consents to the action in question, describing the action taken, are signed by all the directors and filed with the minutes of the proceedings of the Board of Directors or in the records of Preservation Durham, whether done before or after the action so taken. Action taken pursuant to this Section 4.8 shall be effective when the last director signs a written consent to such action, unless the consent specifies a different effective date.

Section 4.9. **Participation by Audio Medium.** Any one or more directors may participate in any meeting of the Board or its committees by means of a conference telephone or similar communications medium allowing all directors participating in the meeting to hear one another

simultaneously throughout the meeting. Participation by such means shall constitute presence in person at a meeting.

ARTICLE V

Committees

Section 5.1. **Executive Committee.** The Board of Directors, by proper resolution and by the vote required under Section 4.6, may appoint an Executive Committee which shall be composed of the President, the Vice President, the Secretary, the Treasurer and any other persons the President shall appoint, and which shall have and exercise the powers of the Board of Directors in the direction of the management of the affairs of Preservation Durham, except at such time as the Board of Directors is in session. Meetings of the Executive Committee may be held at any time on the call of the President or any two (2) members of the Committee. A majority of the members of the Executive Committee shall constitute a quorum. Action by the Executive Committee shall be by majority vote of the members of the Executive Committee. The Executive Committee shall keep minutes of its meetings and shall report its actions to the next succeeding meeting of the Board of Directors.

The Board of Directors shall have the power to direct, limit and control the Executive Committee, and to rescind or modify any action of the Executive Committee, by resolution at any special or regular meeting or by general rules adopted for its guidance. In addition, neither the Executive Committee nor any other committee appointed under these Bylaws shall have any authority to do any act listed in Section 55-A-8-25(e) of the Act.

Section 5.2. **Other Committees.** The President, subject to ratification by the Board of Directors by the vote required under Section 4.6, or the Board of Directors, by proper resolution and by the vote required under Section 4.6, may appoint such other committees as may be deemed by the President or the Board, as applicable, to be appropriate. Each such committee shall have at least two (2) members.

Section 5.3. **Vacancy.** Any vacancy occurring on a Board committee shall be filled by the vote of the Board of Directors required under Section 4.6.

Section 5.4. **Removal.** Members of all committees of the Board shall serve at the pleasure of the Board. Any member of a Board committee may be removed at any time with or without cause by the vote of the Board of Directors required under Section 4.6.

Section 5.5. **Responsibility of Directors.** In discharging his or her duties as a director, a director shall be entitled to rely on information, opinions, reports and statements prepared or presented by a Board committee of which he or she is not a member unless he or she has actual knowledge of a matter which makes such reliance unwarranted. Such permissible reliance shall relieve such director of any responsibility or liability imposed upon him or her by law when and to the extent permitted by the Act.

If any action taken by a Board committee is not thereafter formally considered by the Board, a director may dissent from such action by filing his or her written objection with the Secretary with reasonable promptness after learning of such action.

ARTICLE VI

Officers

Section 6.1. **Offices.** The officers of Preservation Durham shall consist of a President, Vice President, a Secretary and a Treasurer, each of whom shall have such power and duties as are set forth in these Bylaws and as may be delegated to such officer by the Board of Directors and each of whom must be a member of the Board. Preservation Durham's other officers may include one or more Assistant Treasurers, one or more Assistant Secretaries and such other titled officers as may be deemed necessary or advisable by the President, each of which officers or assistant officers thereto shall have such powers as may be delegated to them by the President. Any two or more offices maybe held by the same person, but no officer may act in more than one capacity where action of two or more officers is required.

Section 6.2. **Appointment and Term.** The officers of Preservation Durham shall be appointed by the Board of Directors for stated terms. Such appointments may be made at any regular or special meeting of the Board. Each officer shall hold office until the expiration of such officer's term as a director of Preservation Durham prior to the stated term of his or her appointment, such officer's death, resignation, retirement, removal or disqualification, or such officer's successor is appointed and qualified.

Section 6.3. **Removal and Resignation.** Any officer appointed by the Board of Directors may be removed by the Board with or without cause. Any such removal or disqualification shall be by the vote of the Board of Directors required under Section 4.6.

An officer may resign at any time by communicating such officer's resignation to Preservation Durham. A resignation is effective when it is communicated unless it specifies in writing a later effective date. If a resignation is made effective at a later date and Preservation Durham accepts the future effective date, the Board of Directors may fill the pending vacancy before the effective date if the Board of Directors provides that the successor does not take office until the effective date.

Section 6.4. **President.** Subject to the direction of the Board of Directors, the President shall direct and supervise the management of Preservation Durham in accordance with these Bylaws and Articles.

Except as otherwise set forth herein, the President shall sign, with any other proper officer, any deeds, leases, mortgages, bonds, contracts, or other instruments which may be lawfully executed on behalf of Preservation Durham in the ordinary course of business up to an amount of \$5,000 per instrument, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be delegated by the President or the Board of Directors to some other officer or agent and, in general, he or she shall perform all duties incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 6.5. **Vice President.** Subject to the direction of the Board of Directors, the Vice President shall be authorized to exercise all power and authority of the President in the event of the absence or disability of the President or a vacancy in the office of President. The Vice President shall perform such other duties and be delegated such authority of the President as the President shall reasonably determine.

Section 6.6. **Treasurer.** The Treasurer of Preservation Durham shall have custody of all funds and securities belonging to Preservation Durham and shall receive, deposit or disburse the same under the direction of the President or the Board. The Treasurer also shall keep full and accurate accounts of the finances of Preservation Durham in books especially provided for that purpose; and he or she shall cause a true statement of its assets and liabilities as of the close of each fiscal year and a statement of operations for such fiscal year, all in reasonable detail, to be made and filed at the registered or principal office of Preservation Durham within sixty (60) days after the end of such fiscal year. The statement so filed shall be kept available for inspection by any member for a period of three (3) years; and the Treasurer shall mail or otherwise deliver a copy of the latest such statement to any member upon his written request therefore. The Treasurer, in general, shall perform all duties incident to his office and such duties as may be assigned to him from time to time by the President or the Board of Directors.

Section 6.7. **Secretary.** The Secretary shall: (a) keep the minutes of the meetings of members and the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by the Act; (c) be custodian of the corporate records and of the seal of Preservation Durham, if the Board approves such seal, and ascertain that the seal of Preservation Durham is affixed to all documents the execution of which on behalf of Preservation Durham under its seal is duly authorized, as applicable; (d) keep a register of the address of each member which shall be furnished to the Secretary by such member; (e) keep or cause to be kept in the State of North Carolina at Preservation Durham's registered office or principal office a record of Preservation Durham's members, giving the names and addresses of all members and prepare or cause to be prepared voting lists prior to each meeting of members as required by the Act and these Bylaws; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the President or the Board of Directors. The Secretary shall maintain at Preservation Durham's principal office (i) Preservation Durham's Articles, and all amendments thereto, (ii) these Bylaws, and all the amendments hereto, (iii) minutes of the meetings, and all resolutions, of the Board of Directors, (iv) the minutes of the meetings and the reports, of all committees of the Board of Directors, (v) the minutes of all meetings of members, (vi) all written communications to members, and all financial statements required to be made available to members, for the preceding three (3) years, (vii) a list of the names and business addresses of Preservation Durham's current directors and officers, and (viii) Preservation Durham's most recent annual report delivered to the North Carolina Secretary of State under the Act.

Section 6.8. **Executive Director.** The Board of Directors may employ an Executive Director. The Executive Director shall report directly to the Board of Directors; and shall be responsible to and act under the direction of the President in conducting day-to-day business of the Society.

Section 6.9. **Other Staff.** Other staff may be employed in the discretion of the Executive Director. Salaries of staff members shall be approved by the Board of Directors during its annual budget review.

Section 6.10. **Duties of Other Officers.** The duties of all officers and employees not defined and enumerated in these Bylaws shall be prescribed and fixed by the President or the Board and in carrying out the authority to do all other acts necessary to be done to carry out the prescribed duties unless otherwise ordered by the Board of Directors, including, but not limited to, the power to sign,

certify or endorse notes, certificates of indebtedness, deeds, checks, drafts or other contracts for and on behalf of Preservation Durham and/or to affix the seal of Preservation Durham to such documents as may require it.

ARTICLE VII

Contracts, Loans, Checks and Deposits

Section 7.1. Contracts. Except as otherwise set forth herein, the President is authorized to enter any contract, lease or other agreement, and to execute and deliver any instrument, on behalf of Preservation Durham which is to be entered or executed and delivered in the ordinary course of Preservation Durham's business in an amount of \$5,000 per instrument. In addition, the Board of Directors may authorize any officer or officers, or agent or agents, to enter into any contract, lease or other agreement or to execute and deliver any instrument on behalf of Preservation Durham, whether or not such action is within the ordinary course of Preservation Durham's business, and such authority may be general or confined to specific instances. Further, the Board may require that checks, drafts, or other orders for the payment of money issued in the name of Preservation Durham shall, in addition to being signed by a proper officer, also be signed by such other officer, agent or agents of Preservation Durham and in such manner as shall be determined by resolution of the Board of Directors. Any resolution of the Board of Directors authorizing the execution of any contract, lease or other agreement or delivery of any instrument of behalf of Preservation Durham by the proper officers of Preservation Durham or by officers of Preservation Durham generally and not specifying particular officers shall be deemed to authorize execution or delivery, as applicable, by the President or any other officer if such execution or delivery is within the scope of the duties of such other officer. The Board of Directors may authorize Preservation Durham to enter into employment contracts with any of its employees for any length of time and on any terms and conditions it deems wise.

Section 7.2. Loans. No loans shall be contracted on behalf of Preservation Durham and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors and except as permitted by law. Such authority may be general or specific in nature and scope.

Section 7.3. Checks and Drafts. All checks, drafts or other orders for the payment of money issued in the name of Preservation Durham shall be signed by such officer or officers, agent or agents of Preservation Durham and in such manner as from time to time shall be determined by resolution of the Board of Directors.

Section 7.4. Deposits. All funds of Preservation Durham not otherwise employed from time to time shall be deposited to the credit of Preservation Durham in such depositories as the Board of Directors or a committee thereof shall direct.

ARTICLE VIII

Indemnification of Directors, Officers and Others

Section 8.1. Definitions. For purposes of this Article VIII, the following definitions shall apply:

- (a) “Corporation” means Preservation Durham and all “predecessors” thereof, as such term is defined in the Act.
- (b) “Director” means an individual who is or was a director of Preservation Durham or an individual who, while a director of Preservation Durham, is or was serving at Preservation Durham’s request as a director, officer, partner, trustee, employee or agent or another foreign or domestic corporation, partnership, limited liability company, association, joint venture, trust, employee benefit plan at Preservation Durham’s request if such director’s duties to Preservation Durham also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. “Director” includes, unless the context requires otherwise, the estate or personal representative of a director.
- (c) “Expenses” means expenses of every kind incurred in defending a Proceeding, including, but not limited to, legal, accounting, expert and investigatory fees and expenses.
- (d) “Indemnified Officer” shall mean each officer of Preservation Durham who is also a Director of Preservation Durham and each other officer of Preservation Durham who is designated by the Board of Directors from time to time as an Indemnified Officer. An Indemnified Officer shall be entitled to indemnification hereunder to the same extent as a Director, including, without limitation, indemnification with respect to service by the Indemnified Officer at Preservation Durham’s request as a director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, partnership, limited liability company, association, joint venture, trust, employee benefit plan or other enterprise.
- (e) “Liabilities” means any obligation to pay any or all of the following: a judgment, a settlement, a penalty, a fine (including an excise tax assessed with respect to an employee benefit plan) and reasonable expenses, including, but not limited to, attorney’s fees of opposing parties incurred with respect to a Proceeding.
- (f) “Proceeding” means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, whether formal or informal, and any appeal therein (and or inquiry or investigation that could lead to such a proceeding).

Section 8.2. Indemnification. In addition to, and not in any way in limitation of, all indemnification rights and obligations otherwise provided by law, Preservation Durham shall indemnify and hold harmless its Directors and Indemnified Officers against all Liabilities and Expenses in any Proceeding (including, without limitation, a Proceeding brought by or on behalf of Preservation Durham itself) arising out of their status as Directors or officers, or their service at Preservation Durham’s request as a Director, officer, partner, trustee, employee or agent of another foreign or domestic corporation, limited liability company, association, partnership, joint venture, trust, employee benefit plan or other enterprise, or their activities in any such capacity if the individual (a) conducted himself in good faith; (b) reasonably believed (i) in the case of conduct in his official capacity with the Corporation, that his conduct was in its best interests; and (ii) in all other cases, that his conduct was at least not opposed to its

best interests; and (c) in the case of any criminal proceeding, had no reasonable cause to believe his conduct was unlawful; provided, however, that Preservation Durham shall not indemnify a Director of an Indemnified Officer against Liabilities or Expenses (1) in connection with a proceeding by or in the right of the Corporation in which the individual was adjudged liable to the Corporation; or (2) in connection with any other proceeding charging improper personal benefit to the individual, whether or not involving action in his official capacity, in which the individual was adjudged liable on the basis that personal benefit was improperly received by the individual. Preservation Durham shall also indemnify each Director and Indemnified Officer for his or her reasonable costs, expenses and attorneys' fees incurred in connection with the enforcement of the rights to indemnification granted herein, if it is determined in accordance with Section 8.3 that the Director or Indemnified Officer is entitled to indemnification hereunder.

The Board of Directors shall have the authority to adopt such resolutions pertaining to the implementation of this Section 8.2 as it may from time to time determine, and such resolutions shall be given full effect, even though they supplement, amplify or go beyond the provisions of this Section 8.2, provided and to the extent such resolution does not violate any provision of the Act or Articles. This Section 8.2 shall be construed in a manner to fully effect the purpose and intent of the resolution of Preservation Durham's Board of Directors approving and adopting this provision.

Section 8.3. **Determination.** Any indemnification under Section 8.2 shall be paid by Preservation Durham in a specific case only after a determination that the Director or Indemnified Officer has met the standard of conduct set forth in Section 8.2. Such determination shall be made:

- (a) by the Board of Directors by a majority vote of a quorum consisting of directors not at the time parties to the Proceeding;
- (b) if a quorum cannot be obtained under Section 8.3(a), by a majority vote of a committee duly designated by the Board of Directors (in which vote directors who are parties to the Proceeding may participate), consisting solely of two or more directors not at the time parties to the Proceeding;
- (c) by special legal counsel (i) selected by the Board of Directors or a committee thereof in the manner prescribed in Section 8.3(a) or (b); or (ii) if a quorum of the Board of Directors cannot be obtained under Section 8.3(a) and a committee cannot be designated under Section 8.3(b), selected by a majority vote of the full Board of Directors (in which selection directors who are parties in the Proceeding may participate); or
- (d) by a quorum of the members at a special meeting, but votes of directors or officers who are at the time parties to the Proceeding may not be voted on the determination.

The Board of Directors shall take all such action as may be necessary and appropriate to enable Preservation Durham to pay the indemnification required by this Article VIII.

Section 8.4. **Advances for Expenses.** The Expenses incurred by a Director or an Indemnified Officer in defending a Proceeding may be paid by Preservation Durham in advance of the final disposition of such Proceeding as authorized by the Board of Directors in the specific case upon

receipt of an undertaking by or on behalf of the Director or Indemnified Officer to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by Preservation Durham against such Expenses. Subject to receipt of such undertaking, Preservation Durham shall make reasonable periodic advances for Expenses pursuant to this Section 8.4, unless the Board of Directors shall determine, in the manner provided in Section 8.3 and based on the facts then known, that indemnification under this Article VIII is or will be precluded.

Section 8.5. **Reliance and Consideration.** Any Director or Indemnified Officer who at any time after the adoption of this Article VIII serves or has served in any of the aforesaid capacities for or on behalf of Preservation Durham shall be deemed to be doing or to have done so in reliance upon, and as consideration for, the right of indemnification provided herein. Such right, however, shall not be exclusive of any other rights to which such person may be entitled apart from the provisions of this Article VIII. No amendment, modification or repeal of this Article VIII shall adversely affect the right of any Director or Indemnified Officer to indemnification hereunder with respect to any activities occurring prior to the time of such amendment, modification or repeal.

Section 8.6. **Insurance.** Preservation Durham may purchase and maintain insurance on behalf of its directors, officers, employees and agents and those persons who were or are serving at the request of Preservation Durham in any capacity with another corporation, partnership, limited liability company, association, joint venture, trust, employee benefit plan or other enterprise against any liability asserted against or incurred by such person in any capacity, or arising out of his or her status as such, whether or not Preservation Durham would have the power to indemnify such person against such liability under the provisions of this Article VIII or otherwise. Any full or partial payment made by an insurance company under any insurance policy covering any director, officer, employee, agent or other person identified above made to or on behalf of a person entitled to indemnification under this Article VIII shall relieve Preservation Durham of its liability for indemnification provided for in this Article VIII or otherwise to the extent of such payment, and no insurer shall have a right of subrogation against Preservation Durham with respect to such payment.

ARTICLE IX

General Provisions

Section 9.1. **Seal.** The corporate seal of Preservation Durham shall be in such form as approved by the Board.

Section 9.2. **Waiver of Notice.** Except as otherwise expressly provided herein, whenever any notice is required to be given to any member or director under the provisions of the Act or under the provisions of the Articles or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice and delivered to the Secretary of Preservation Durham, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

Section 9.3. **Amendments: Emergency Bylaws.** Except as otherwise expressly provided herein, these Bylaws may be amended or repealed and new Bylaws may be adopted only by the affirmative vote of two-thirds (2/3) of the number of directors prescribed by the Board of Directors under Section 3.2 and in office at the time such action is submitted to a vote, and by the members entitled to

vote thereon by two-thirds (2/3) of the votes cast. Such action may be taken at any regular or special meeting of the Board of Directors or members, or by action without a Board meeting in accordance with these Bylaws and the Act. However, in the circumstances described in Section 55A-2-07 of the Act, the Board of Directors may adopt, as provided in Sections 55-A-2-07 and 55A-3-03 of the Act, such emergency bylaws as may be necessary or appropriate. Such emergency bylaws shall supersede any inconsistent provisions of these Bylaws during the existence of such emergency.

Section 9.4. **Fiscal Year.** The fiscal year of Preservation Durham shall be from July 1st of each year through June 30th of the following calendar year.

Section 9.5. **Definitions.** As used herein, the term “Act” shall refer to the North Carolina Nonprofit Corporation Act, as of the date set forth below and as thereafter amended from time to time. As used herein, the term, “Articles” shall mean the Articles of Incorporation of Preservation Durham as they exist as the date set forth below and as hereafter amended or restated.

Adopted this the ____ day of _____.

Secretary, Preservation Durham