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Gwinnett County, GA

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1770 Indian Trail Road,
Suite 440
Norcross, GA 30093
2158.17 / AHB

Cross references:

Deed Book: 60849
Page: 421
Deed Book: 60879
Page: 564
Deed Book: 60912
Page: 471
Deed Book: 61031
Page: 68

**AMENDED & RESTATED
DECLARATION OF CONDOMINIUM
FOR
TOWN CENTER OVERLOOK CONDOMINIUM**

IMPORTANT NOTICE:

THIS DECLARATION SUBMITS THE PROPERTY TO THE PROVISIONS OF THE GEORGIA CONDOMINIUM ACT, O.C.G.A. § 44-3-70 *ET SEQ.* CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING BOTH ASSESSMENTS/CHARGES DUE ON UNITS AND ANY UNCURED ARCHITECTURAL VIOLATIONS OR UNAUTHORIZED IMPROVEMENTS ON UNITS.

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STATE OF GEORGIA
COUNTY OF GWINNETT

AMENDED & RESTATED
DECLARATION OF CONDOMINIUM
FOR
TOWN CENTER OVERLOOK CONDOMINIUM

THIS DECLARATION is made on the date set forth below by McKinley Homes US LLC, a Georgia limited liability company (hereinafter referred to as "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant recorded that certain Declaration of Condominium for Town Center Overlook Condominium, which was recorded on September 11, 2023, at Deed Book 60803, Page 96, *et seq.*, Gwinnett County, Georgia land records, as amended by that certain Amendment to the Declaration of Condominium for Town Center Overlook Condominium, recorded on October 5, 2023, at Deed Book 60849, Page 421, *et seq.*, aforesaid records (hereinafter, as amended and/or supplemented from time to time, the "Declaration"); and

WHEREAS, a Condominium Plat relating to the Town Center Overlook Condominium (the "Condominium") prepared by Robbie Henderson Surveying & Planning, was filed in Condominium Plat Book CD6, Pages 270 through 274, Gwinnett County, Georgia Records; and

WHEREAS, Floor Plans relating to the Condominium prepared by Robbie Henderson Surveying & Planning, dated August 11, 2023, were filed in Plat Book 160 Page 209, Gwinnett County, Georgia Records; and

WHEREAS, Declarant desire to reform the existing leasing restriction to more closely track the leasing restriction required by applicable ordinances and correct scrivener's errors in the initial Exhibit "B" to the Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" of this Declaration, including the improvements located and to be located thereon, is hereby submitted and made subject to the form of ownership set forth in the Georgia Condominium Act, and is hereby subjected to the provisions of this Declaration. By virtue of the recording of this Declaration, said property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the provisions of the Georgia Condominium Act and the covenants, conditions, restrictions, easements, assessments, and liens set forth and/or described in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property subject to this Declaration, and shall be binding on all Persons having any right, title or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors in title and assigns, and shall be for the benefit of all owners of the property subject to this Declaration.

1. NAME.

The name of the condominium is Town Center Overlook Condominium (hereinafter sometimes

called "Town Center Overlook" or the "Condominium," as further defined herein), which Condominium is hereby submitted by Declarant to the Georgia Condominium Act, O.C.G.A. § 44-3-70, *et seq.*, as amended.

2. DEFINITIONS.

Generally, terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Act or the Georgia Nonprofit Corporation Code. Unless the context otherwise requires, certain terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall be defined as follows:

- (a) Act shall mean the Georgia Condominium Act, O.C.G.A. § 44-3-70, *et seq.*, as such Act may be amended from time to time.
- (b) Additional Property shall mean the real property described in Exhibit "C" attached hereto and incorporated herein which Declarant may, but shall have no obligation to, submit to the Condominium as provided in this Declaration.
- (c) Architectural Control Committee or ACC shall mean the committee established to exercise the architectural review powers set forth in Paragraph 13 of this Declaration, which shall be the Board of Directors of the Association unless by resolution the Board appoints a separate Architectural Control Committee.
- (d) Area of Common Responsibility shall mean and refer to the Common Elements, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any other Person become the responsibility of the Association.
- (e) Articles or Articles of Incorporation shall mean the Articles of Incorporation of Town Center Overlook Condominium Association, Inc., which have been filed with the Secretary of State of the State of Georgia.
- (f) Assessment Exemption Period shall have the same meaning as set forth in Subparagraph 10(j) of this Declaration.
- (g) Association shall mean Town Center Overlook Condominium Association, Inc., a Georgia nonprofit corporation, and its successors or assigns.
- (h) Board or Board of Directors shall mean the board of directors of the Association, which shall be the body responsible for the management and operation of the Association.
- (i) Bylaws shall mean the Bylaws of Town Center Overlook Condominium Association, Inc., attached to this Declaration as Exhibit "D" and incorporated herein by this reference.
- (j) Common Elements shall mean those portions of the property subject to this Declaration which are not included within the boundaries of a Unit, as more particularly described in this Declaration.
- (k) Common Expenses shall mean the expenses incurred or anticipated to be incurred by the Association for the general benefit of the Condominium, including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Elements.

- (l) Condominium shall mean all the real property described in Exhibit "A" attached hereto and incorporated herein by this reference, submitted to the provisions of the Act by this Declaration and any of the real property described in Exhibit "C" that is later submitted to the provisions of the Act and this Declaration.
- (m) Condominium Instruments shall mean this Declaration and all exhibits to this Declaration, including the Bylaws of the Association, and the Survey and Floor Plans, all as such documents may be supplemented or amended from time to time.
- (n) Declarant shall mean Town Center Overlook, LLC, a Georgia limited liability company, and its respective successors in title and assigns and any other Person as further set forth in Section 44-3-71(13) of the Act, provided that such successors and/or assigns are designated in writing by Declarant as its successor in title and/or assignee of the rights of Declarant set forth herein. The expiration of the Declarant Control Period shall not terminate or alter the status of the above-referenced entity and its successor in title and/or assignee, as Declarant hereunder, or divest it of other rights specifically reserved to Declarant herein.
- (o) Declarant Control Period shall mean the period of time during which Declarant is authorized to appoint and remove the members of the Board of Directors as provided in Article III, Part A, Section 2 of the Bylaws.
- (p) Electronic Document shall mean information created, transmitted, received or stored by electronic means and retrievable in humanly perceivable form including, without limitation, e-mail, web pages, electronic documents, and facsimile transmissions.
- (q) Electronic Signature shall mean a signature created, transmitted, received or stored by electronic means and includes, but is not limited to, a Secure Electronic Signature.
- (r) Eligible Mortgage Holder shall mean those holders of first Mortgages secured by a lien on a Unit in the Condominium who have requested notice of certain items as set forth in this Declaration.
- (s) Floor Plans shall mean the floor plans for Town Center Overlook Condominium, filed in the condominium file cabinet of the Official Records, as may be supplemented or amended.
- (t) Limited Common Elements shall mean those portions of the Common Elements reserved for the exclusive use of those Persons entitled to occupy one (1) or more, but less than all of the Units, as more particularly set forth in this Declaration.
- (u) Majority shall mean more than fifty percent (50%) of the total eligible number.
- (v) Mortgage shall refer to any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation including, but not limited to, a transfer or conveyance of fee title for such purpose.
- (w) Mortgagee or Mortgage Holder shall mean the holder of any Mortgage.
- (x) Occupant shall mean any Person other than an Owner regularly occupying all or any portion of a Unit for office, business, or commercial purposes as an owner or employer of such business.

- (y) O.C.G.A. shall mean the Official Code of Georgia Annotated, as may be amended.
- (z) Official Records shall mean the official land records of the Clerk of the Superior Court of Gwinnett County, Georgia.
- (aa) Owner shall mean the record titleholder of a Unit within the Condominium, but shall not include a Person who is only a Mortgage Holder.
- (bb) Permittee shall mean any Occupant and any officer, agent, employee, licensee, customer, vendor, supplier, guest, invitee or contractor of an Owner or Declarant.
- (cc) Person shall mean any individual, corporation, firm, association, partnership, trust, or other legal entity.
- (dd) Secure Electronic Signature shall mean an electronic or digital method executed or adopted by a Person with the intent to be bound by or to authenticate a record, which is unique to the Person using it, is capable of verification, is under the sole control of the Person using it, and is linked to data in such a manner that if the data is changed, the electronic signature is invalidated.
- (ee) Survey shall mean the plat of survey for Town Center Overlook Condominium filed in the condominium plat book of the Official Records, as may be supplemented or amended.
- (ff) Total Association Vote shall mean all of the eligible votes attributed to members of the Association (including votes attributable to Declarant), and the consent of Declarant for so long as Declarant owns a Unit primarily for the purpose of sale.
- (gg) Unit shall mean that portion of the Condominium intended for individual ownership and use as more particularly described in this Declaration and shall include the undivided ownership in the Common Elements assigned to such Unit by this Declaration.

3. LOCATION; PROPERTY DESCRIPTION; PLATS AND PLANS.

The Condominium subject to this Declaration and the Act is located in Land Lots 300 & 301, 6th District of Gwinnett County, Georgia all as more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. The Survey and Floor Plans relating to the Condominium will be filed in the Official Records at the time the Condominium property is submitted to this Declaration. The Survey and Floor Plans are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

So long as Declarant owns a Unit, Declarant reserves the right, but shall have no obligation, to make improvements and changes to all or part of the Common Elements and the Units owned by Declarant (other than changes to the location of Unit boundaries unless expressly permitted herein), including, without limitation: the addition and realignment of parking spaces; the addition and reconfiguration of storage spaces; the renovation and installation of changes to utility systems and facilities; the rearrangement and installation of security and refuse facilities; work relating to building exteriors; landscaping; and extension of the drives and utility lines and pipes constituting a part of the Condominium.

4. UNITS AND BOUNDARIES.

The Condominium is currently divided into six (6) separate Units, and Common Elements, some of which will be assigned as Limited Common Elements. Each Unit consists of a dwelling, and its appurtenant percentage of undivided interest in the Common Elements. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the Act and the Condominium Instruments. The Units are depicted on the Survey and the Floor Plans. Each Unit includes that part of the structure, which lies within the following boundaries:

- (a) Vertical Boundaries. The perimetrical or vertical boundaries of each Unit shall be the vertical planes formed by the outermost surface of the studs in the walls separating the Unit from the exterior wall of the Building and the walls separating the Unit from the hallway of the floor on which the Unit is located in the Building. With respect to common walls between the Units, the perimetrical or vertical boundaries of the Units served thereby shall be the centerline of such walls. The vertical boundaries include the studs and the wallboard (drywall, lath and plaster, wallboard, ceiling tile, or other material) enclosing the Unit to their intersections with the upper and lower horizontal boundaries of the Unit.
- (b) Horizontal (Upper and Lower) Boundaries. The upper horizontal boundary of each Unit shall be the plane formed by the lower surface of the wood framing or concrete above the ceiling on the uppermost story of the Unit, so that the drywall, lath and plaster, wallboard, ceiling tile, or other material comprising such ceiling shall constitute a portion of the Unit. The lower horizontal boundary of each Unit shall be the plane formed by the upper surface of the floor joists or trusses on which the subfloor of the lowest story is constructed, with the flooring and subflooring constituting part of the Unit and the joists or trusses below the subfloor of such story constituting part of the Common Elements. Notwithstanding the above, however, if the flooring or subfloor on the lowest story of the Unit (including any garage constituting a portion of the Unit) is a concrete slab foundation, the lower horizontal boundary of such Unit shall include said concrete slab foundation and garage.
- (c) Additional Information to Interpret Unit Boundaries. Entry doors and exterior glass surfaces, including, but not limited to, windows and glass doors, serving the Unit shall be included within the boundaries of the Unit. Heating and air conditioning systems serving a single Unit (including any part of any such system located outside the boundaries of the Unit), all duct work for heating and air conditioning systems and appliances and plumbing fixtures within a Unit shall be part of the Unit.

If any chutes, flues, ducts, conduits, wires, pipes or other apparatus lies partially within and partially outside of the designated boundaries of the Unit, any portion thereof that serves only that Unit shall be deemed to be a part of that Unit, while any portions thereof which serve more than one (1) Unit or any portion of the Common Elements shall be deemed a part of the Common Elements.

In interpreting deeds and Floor Plans, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original Floor Plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or Floor Plan, regardless of settling or lateral movement of the building in which the Unit was located, and regardless of minor variances between the boundaries shown on the Floor Plans or in a deed and those of the Unit.

The ownership of each Unit shall include and thereby shall pass with each Unit, whether or

not separately described in the conveyance thereof, that percentage of the right, title and interest in the Common Elements attributable to such Unit, together with membership in the Association and an undivided interest in the funds and assets held by the Association.

5. COMMON ELEMENTS.

The Common Elements consist of all portions of the Condominium not located within the boundaries of a Unit. The Common Elements include, without limitation, if any, certain utility infrastructures, entry feature and lighting for same, paving, walls, the foundation, roofs, exterior walls of the buildings, detention pond, landscape areas, outside parking area and lighting for same, mail area, fitness facility, swimming pool, club house, pool house, limited access gated entry system, and all other lighting in any Common Element of the Condominium buildings, if any.

Ownership of the Common Elements shall be by the Owners as tenants-in-common. The percentage of undivided interest in and to the Common Elements attributable to each Unit is set forth in Exhibit "B" attached hereto and incorporated herein by this reference. Such percentages of undivided interest may be altered only by the consent of all Owners and Mortgagees (or such lesser number of Owners and Mortgagees as may hereafter be prescribed by the Act) expressed in a duly recorded amendment to this Declaration, except in the case of expansion of the Condominium, as provided in Paragraph 25 of this Declaration, in which case the amendment may be approved and executed by Declarant without approval of the Owners or Mortgagees.

The Common Elements shall remain undivided, and no Owner or any other Person shall bring any action for partition or division of the whole or any part thereof except as provided in the Act. Except as provided for Limited Common Elements or as otherwise provided herein, each Owner and the Association may use the Common Elements for the purposes for which they are intended, but no such use shall enter or encroach upon the lawful rights of the other Owners.

6. LIMITED COMMON ELEMENTS.

- (a) The Limited Common Elements located on the Condominium and the Unit(s) to which they are assigned are:
 - (i) stoops and stairs serving more than one (1) but less than all Units, as shown on the Floor Plans, are assigned as Limited Common Elements to the Units that they serve;
 - (ii) the portion of the Common Elements on which there is located any portion of the air conditioning or heating system exclusively serving a particular Unit or Units is assigned as a Limited Common Element to the Unit or Units so served;
 - (iii) any utility meter which serves only one (1) Unit is assigned as a Limited Common Element to the Unit so served;
 - (iv) any patio or porch attached to and serving only one (1) Unit is assigned as a Limited Common Element to the Unit to which it is attached and which it serves;
 - (v) the driveway which serves only one (1) Unit is assigned as a Limited Common Element to the Unit so served; and

- (vi) each Unit is assigned one (1) mailbox or mail slot, to be initially assigned in the sole discretion of Declarant.
- (b) The Association's Board of Directors, without need for a membership vote, is hereby authorized to assign and to reassign Limited Common Elements and Common Elements not previously assigned, provided that any such assignment or reassignment shall be made in accordance with the provisions of Section 44-3-82(b) and (c) of the Act. A Common Element not previously assigned as a Limited Common Element may be so assigned and a Limited Common Element may be reassigned by the Board, without the need for a vote of the Association, upon written application to the Association by the Owner or Owners for whose exclusive use such Common Element is requested or whose use of the limited Common Element previously assigned is directly affected. Upon such application, the Association shall prepare and execute an amendment to this Declaration assigning the Common Element as a Limited Common Element or reassigning the Limited Common Element, which amendment shall be executed by the Owner or Owners making such application. Such amendment shall be delivered and become effective as provided in Section 44-3-82 of the Act. For so long as Declarant owns a Unit primarily for the purpose of sale, an amendment to assign a Common Element, not previously assigned as a Limited Common Element shall be executed by the officers of the Association, if the request is made by Declarant. The Board has the right to approve or disapprove any such request made by any Person other than Declarant.
- (c) For so long as Declarant owns a Unit primarily for the purpose of sale, Declarant shall have the right to sell to Owners or gratuitously assign to Owners, at Declarant's sole discretion, one (1) or more parking spaces to be assigned as Limited Common Element pursuant to Subparagraphs (a) and (b) above. The proceeds of the sale of parking spaces as Limited Common Elements shall belong to Declarant.

7. ASSOCIATION MEMBERSHIP AND ALLOCATION OF VOTES.

All Owners, by virtue of their ownership of a fee or undivided fee interest in any Unit in the Condominium, excluding Persons holding such interest under a Mortgage, are members of the Association and, except as otherwise provided herein or in the Bylaws, shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to this Declaration and in accordance with the Bylaws. Subject to the provisions of the Condominium Instruments, the Owner or collective Owners shall be entitled to one (1) equally weighted vote for such Unit.

8. ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

- (a) Except as provided below, or elsewhere in the Act or Condominium Instruments, the amount of all Common Expenses shall be assessed against all the Units in accordance with the percentage of undivided interest in the Common Elements appurtenant to the Unit as set forth in Exhibit "B" attached hereto and incorporated herein by this reference.
- (b) The Board of Directors shall have the power to levy special assessments against Units pursuant to this Paragraph and to Section 44-3-80(b) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board of Directors to exercise its authority under this Paragraph shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Paragraph in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority

under this Paragraph.

- (c) Any Common Expenses benefiting less than all of the Units or significantly disproportionately benefiting all Units shall be specially assessed equitably among all of the Units that are benefited according to the benefit received. Except for expenses for maintenance, repair or replacement of Limited Common Elements, that shall be specially assessed, expenses incurred for the maintenance, repair or replacement of the Area of Common Responsibility, shall not be specially assessed.
- (d) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units or by the Occupants, licensees or invitees of any such Unit or Units may be specially assessed against such Unit or Units.
- (e) Each building in the Condominium is currently served by a common water meter. The Board, without a vote of the membership, shall have the authority to assess, as a special assessment, as provided in Subparagraph (c) above, individual Unit utilities usage charges, based on a formula determined by the Board of Directors, including a right to add a charge for the cost of overhead for such service. The Board, without a vote of the membership, also shall have the authority to assess, as a special assessment, as provided in Subparagraph (c) above, any and all costs and expenses incurred to install separate utility meters for the Units.

2. ASSOCIATION RIGHTS AND RESTRICTIONS.

In addition to and not in limitation of all other rights it may have, the Association, acting through its Board of Directors, shall have the right and authority:

- (a) to enter into Units for maintenance, emergency, or life-safety purposes, which right may be exercised by the Board of Directors and/or its officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit. For the purposes of this Paragraph, an emergency justifying immediate entry into a Unit shall include, but not be limited to the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a Person or animal might be injured or sick and require immediate medical attention. No one exercising the rights granted in this Subparagraph shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights, except as provided in the Act. The failure to exercise the rights herein granted or to exercise said rights in a timely manner shall not create liability to any of the above- referenced parties, it being agreed that no duty to enter a Unit shall exist;
- (b) to make and to enforce reasonable rules and regulations governing the use of the Condominium, including the Units, Limited Common Elements, and Common Elements;
- (c) to enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by the imposition of reasonable monetary fines and suspension of use and voting privileges as provided in Section 44-3-76 of the Act;
- (d) to grant and accept permits, licenses, utility easements, leases, and other easements;

- (e) to control, manage, operate, maintain, improve and replace all portions of the Area of Common Responsibility;
- (f) to represent and act on behalf of the Owners in the event of damage or destruction as a result of casualty loss in accordance with the provisions of the Act and Paragraph 12 of this Declaration;
- (g) to represent and act on behalf of the Owners in the event of any loss resulting from condemnation or eminent domain in accordance with the provisions of the Act and Paragraph 20 of this Declaration;
- (h) to acquire, hold, and dispose of tangible and intangible personal property and real property;
- (i) to collect security deposits in reasonable amounts, as determined by the Board of Directors in its sole discretion, to protect against any damage to the Condominium, including, without limitation, damage resulting from moving in or out of a Unit; the transportation and use of construction materials in the Condominium and the alteration, modification, or addition to a Unit and any Limited Common Element appurtenant thereto. Costs for repair of such damage may be deductible from the security deposit and any additional expenses may be specifically assessed against the Unit under Subparagraph 8(c) above;
- (j) to approve contractors or subcontractors who have access to the Condominium for the purpose of making repairs or improvements to Units based on rules and regulations promulgated and adopted by the Board that may include, without limitation: financial stability of the contractors and/or subcontractors; history of compliance with the Condominium Instruments and rules and regulations of the Association; and other factors that may be reflective of quality and ability. The Board may also impose insurance requirements and collect other non-refundable fees for use of elevators and the trash receptacle;
- (k) at the sole expense of the Association, without need for a membership vote, and without the consent of any affected Owner, to relocate any portion of the air conditioning, heating, plumbing, ventilating, exhaust, or electrical system serving a particular Unit, provided that after such relocation, the system serving the Unit functions at least as well and at no greater cost to the Owner as existed prior to the relocation;
- (l) to enter into joint agreements and contracts with other Persons for the provision of services, including, without limitation, management, landscaping, concierge, property monitoring services, and trash removal services;
- (m) to appoint officers of the Association in accordance with the Bylaws; and
- (n) subject to the Act and the Declaration, to purchase insurance for the Condominium, Limited Common Elements, Common Elements and/or the members of the Board, having deductibles authorized from time to time by the Board of Directors.

NOTWITHSTANDING ANYTHING TO THE CONTRARY STATED HEREIN, THE ASSOCIATION SHALL NOT BE OBLIGATED TO TAKE ANY ACTION TO ENFORCE ANY COVENANT, USE RESTRICTION, OR RULE THAT THE BOARD, IN EXERCISE OF ITS BUSINESS JUDGMENT, DETERMINES IS OR IS LIKELY TO BE CONSTRUED AS INCONSISTENT WITH APPLICABLE LAW OR IN ANY CASE IN WHICH THE BOARD REASONABLY DETERMINES THAT THE

ASSOCIATION'S POSITION IS NOT STRONG ENOUGH TO JUSTIFY TAKING SUCH ACTION. SUCH A DECISION SHALL NOT BE CONSTRUED AS A WAIVER OF THE RIGHT OF THE ASSOCIATION TO ENFORCE SUCH PROVISION AT A LATER TIME UNDER OTHER CIRCUMSTANCES OR ESTOP THE ASSOCIATION FROM ENFORCING ANY OTHER COVENANT, USE RESTRICTION OR RULE.

10. ASSESSMENTS.

- (a) Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Units in the Condominium as may be more specifically authorized from time to time by the Board.
- (b) Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Unit that are established pursuant to the terms of this Declaration, including but not limited to reasonable fines imposed and/or established by the Board of Directors in accordance with the terms of this Declaration and/or the Act.

All such assessments, together with charges, interest, costs, and reasonable attorneys' fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted by the Act, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors. Unless otherwise provided, the annual assessments shall be paid in equal monthly installments due on the first day of each calendar month. No Owner may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Elements, nonuse of services provided by the Association or its agents, the Association's failure to perform its obligations required hereunder, or an inconvenience or discomfort arising from the Association's performance of its duties. The lien provided for herein shall have priority as provided in the Act. Notwithstanding anything to the contrary stated herein, except to the extent provided otherwise in this Paragraph, Declarant shall have no obligation to fund budgetary deficits of the Association.

The Board of Directors shall have the right to: (i) not spend the full amount budgeted for any particular line item in the budget, (ii) spend more than what has been budgeted, and (iii) shift revenues within the budget from one line to another. Notwithstanding anything to the contrary stated herein, during the Declarant Control Period, Declarant or Declarant appointed Board of Directors shall be authorized to unilaterally adopt a new or revised budget to reflect costs that were not contemplated at the time the initial, estimated operating budget for the Association was developed, or to reflect unanticipated changes in the costs of a line item in such budget or to provide for the submission of an additional phase to the Condominium.

- (c) Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default, as follows:
- (i) If any installment of annual assessments or any part thereof is not paid in full by the tenth (10th) day of the month or if any other charge is not paid within ten (10) days of the due date, a late charge equal to the greater of Ten Dollars (\$10) or ten percent (10%) of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner and interest at the rate of ten percent (10%) per annum or such higher rate as may be permitted by the Act shall accrue from the due date thereof.
 - (ii) If part payment of assessments and related charges is made, the amount received may be applied first to costs and reasonable attorneys' fees actually incurred, then to late charges, then to interest, then to delinquent assessments, and then to current assessments.
 - (iii) If assessments, fines or other charges or any part thereof due from an Owner remain delinquent and unpaid for a period greater than fifteen (15) days from the date due, a notice of delinquency may be given to that Owner stating that if the assessment, fine or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the Board of Directors may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment and of any special assessment without any further notice being given to the delinquent Owner. Upon acceleration, that Owner shall thereby lose the privilege of paying the annual assessment in monthly installments for that fiscal year.
 - (iv) If assessments and other charges or any part thereof remain unpaid more thirty (30) days after they become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law, including reasonable attorneys' fees actually incurred, and suspend the Owner and/or Occupant's right to use the Common Elements, including the right to bring or park vehicles on the Common Elements or have guests bring or park vehicles on the Common Elements. However, the Board may not limit pedestrian, medical, fire, police or other health, safety, service or emergency vehicle ingress or egress to or from the Unit or deny necessary parking of clearly and properly identified handicapped vehicles used by handicapped owners or occupants protected by the Fair Housing Amendments Act of 1988. Prior to suspending parking privileges, the Association shall provide the delinquent Owner or Occupant written notice of its intention to do so, sent by certified mail not less than ten (10) days prior to the date of such suspension.
 - (v) If any assessment or other charge is delinquent for thirty (30) days or more, and the Association has obtained judgment(s) totaling more than Seven Hundred Fifty Dollars (\$750) against the Owner or encumbering the Unit, then, in addition to all other rights provided in the Act and herein, the Association shall have the right, in compliance with any requirements set forth in the Section 44-3-76 of the Act, to suspend water, electricity, gas, heat, air conditioning, or other utility services to the Unit paid for as a Common Expense by the Association. Any costs incurred by the Association in discontinuing and/or reconnecting any utility service, including reasonable attorneys' fees, shall be an assessment against the Unit. The utility services shall not be required to be restored until the judgment(s) is (are) paid in full, at which time the Association shall make arrangements for restoration of the service. An

Owner whose utility or service has been suspended hereunder shall not be entitled to use any such utility or service from any source, and any such unauthorized use shall be considered a theft of services under O.C.G.A. Section 16-8-5.

Notwithstanding the above, if cable television service or any other service not constituting a Utility is provided by the Association as a Common Expense, that service may be suspended upon ten (10) days written notice to the delinquent Owner, without obtaining any judgment against the Owner or encumbering the Unit. Enforcement under this subparagraph is not dependent upon or related to other restrictions and/or other actions.

- (d) Computation of Operating Budget and Assessment. It shall be the duty of the Board at least twenty-one (21) days prior to the Association's annual meeting to prepare and deliver to each member a budget covering the estimated costs of operating the Condominium during the coming year and a notice of the assessments to be levied against each Unit for the following year. The budget and the assessment shall become effective unless disapproved at a duly called and constituted annual meeting of the Association by a vote of a Majority of the Total Association Vote and the Declarant; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called for at such meeting.

Notwithstanding the foregoing, in the event that the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. In such case, the Board may propose a new budget at any time during the year at a special meeting of the Association. The proposed budget and assessment shall be delivered to the members at least twenty-one (21) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to budgets considered at special meetings.

Notwithstanding anything to the contrary stated herein, during the Declarant Control Period, Declarant or the Declarant appointed Board of Directors shall be authorized to unilaterally pass a new budget to reflect costs resulting from the addition of a phase or phases to the Condominium or to reflect costs that were not contemplated at the time the initial, estimated operating budget for the Association was established.

- (e) Special Assessments. In addition to the annual assessment provided for in Subparagraph (d) above, the Board may, at any time, and in addition to any other rights it may have, levy a special assessment against all Owners, notice of which shall be sent to all Owners. Any special assessment (except as provided in Subparagraph 8(b) regarding the power to assess specially pursuant to Section 44-3-80(b) of the Act and Subparagraph 12(b) herein, regarding repair or reconstruction of casualty damage to or destruction of all or part of the Condominium) that would cause the average total of special assessments levied in one (1) fiscal year to one-sixth of the annual common expense assessment for the unit or such higher amount as is authorized by the Act, shall be approved by a Majority of the Total Association Vote prior to becoming effective.
- (f) Working Capital Fund. Declarant, on behalf of the Association, shall establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services. A non-refundable contribution to the working capital fund of the Association shall be paid by the

purchaser of a Unit at the closing of each sale or resale of a Unit in the amount of two months of the general assessment charged to such Unit. Declarant shall not use the working capital funds to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association. Notwithstanding anything to the contrary herein, the contribution to the working capital fund shall not be due from: (i) any grantee who is the Domestic Partner, spouse or former spouse of the grantor; (ii) any grantee that is a wholly-owned entity of the grantor; (iii) any grantee to whom a Unit is conveyed by a will or through the law of intestacy; or (iv) any grantee of a Unit who obtains title pursuant to judicial or nonjudicial foreclosure of any first Mortgage of record or secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Unit).

- (g) Capital Reserve Budget and Contribution. After the expiration of the Declarant Control Period, the Board of Directors may annually prepare a capital reserve budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may set the required capital reserve contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital reserve budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The annual capital reserve contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in Subparagraph (d) of this Paragraph. A copy of the capital reserve budget shall be distributed to each member in the same manner as the operating budget.

Notwithstanding any other provisions of this Declaration, during the Declarant Control Period, Declarant shall not be required to prepare a capital reserve budget, set any other capital reserve contribution, or otherwise collect amounts for capital reserves.

- (h) Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Unit. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding Ten Dollars (\$10) or such higher amount as may be authorized by the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Unit as of the date specified therein.
- (i) Surplus Funds and Common Profits. Pursuant to Section 44-3-108 of the Act, common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, either be distributed to the Owners or credited to the next assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Unit, or added to the Association's capital reserve account as set forth in (f) above.

If the Board of Directors reasonably determines that during a fiscal year there will likely be a surplus of funds at the end of such fiscal year (excluding amounts designated for reserves), the Board of Directors may, but shall not be required to, reduce the amount of the annual assessment to be collected from the Owners for the remainder of that fiscal year. Any Owner who

has already paid the entire annual assessment at the time of such reduction shall, in the discretion of the Owner, either receive a refund of the overpayment or a credit of the amount of the overpayment towards the annual assessment of the Association for the following fiscal year. Notwithstanding the above, the Association may first apply the amount of any overpayment toward any other amount the Owner may owe to the Association.

- (j) Assessment Exemption Period. Notwithstanding anything to the contrary stated herein, Declarant shall be excused from the payment of assessments to the extent permitted by the Act for a period (the "Assessment Exemption Period") commencing on the date this Declaration is recorded in the Official Records and ending on the following date, whichever occurs first: (i) the date being the latest date permitted in the Act; or (ii) the date determined by Declarant, as provided in a written notice to the Association. During the Assessment Exemption Period, as to the portion of assessments assessed pursuant to Section 44-3-80(c) of the Act, Declarant shall pay such Common Expenses incurred by the Association during the Assessment Exemption Period that exceed the amounts assessed against other owners.

Additionally, during the Assessment Exemption Period: (i) no capital contributions, start-up funds, initiation fees, or contributions to capital reserve accounts that are receivable from Unit purchasers or Owners and payable to the Association at closing may be used for payment of Common Expenses; (ii) no portion of the payment of assessments collected From Owners intended to be utilized for reserves for deferred maintenance, reserves for depreciation, or other reserves, as shown on the operating budget for the Condominium may be used for payment of Common Expenses; and (iii) no prepayments of assessments made by Owners shall be used for the payment of Common Expenses prior to the time the assessments would otherwise be due.

11. INSURANCE.

The Association, acting through its Board of Directors, shall obtain and maintain at all times, as a Common Expense, insurance as required by Section 44-3-107 of the Act, as amended, and as required herein, and as determined by the Board of Directors with regards to both limits of insurance and coverage. In accordance with the Act, the property insurance shall, at a minimum, afford fire and extended coverage insurance for and in an amount consonant with the full replacement value of the buildings and other structures on the Condominium. Such coverage shall include all of the Units and the fixtures initially installed therein by Declarant and replacements thereof up to the value of those initially installed by Declarant, but shall not include any improvements or additions (including wall coverings and fixtures) made by or on behalf of any Owner other than those made by Declarant and shall not include furnishings and other personal property within a Unit.

All insurance purchased by the Association pursuant to this Paragraph shall run to the benefit of the Association, the Board of Directors, officers, all agents and employees of the Association, the Owners and their respective Mortgagees, and all other Persons entitled to occupy any Unit as their interests may appear. The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

The Board of Directors shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs and each Owner shall have the right to obtain additional coverage at his or her own expense.

All insurance coverage for the Association shall be written in the name of the Association as trustee for itself, each of the Owners, and the Mortgagees of Owners, if any. It shall be the duty of the Board of Directors at least every two (2) years to conduct an insurance review to determine if the policy in force is adequate to meet the needs of the Association and to satisfy the requirements of Section 44-3-107 of the Act, as amended. Such responsibility may be performed, and shall be deemed reasonably performed, by the Board requesting the Association's insurance agent to verify that insurance policies in existence meet the needs of the Association and satisfy the requirements of Section 44-3-107 of the Act, as amended.

- (a) The Board of Directors shall utilize commercially reasonable efforts to secure a blanket hazard insurance policy providing "special perils" coverage in an amount equal to full replacement cost, before application of deductibles, of all structures located on the Condominium as required by Section 44-3-107 of the Act. If "special perils" coverage is not reasonably available at reasonable cost, the Board shall obtain, at a minimum, fire and extended coverage, including coverage for vandalism and malicious mischief, in like amounts. The Board shall use commercially reasonable efforts to obtain policies that will provide the following:
 - (i) the insurer waives its rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners, Occupants, and their respective household members;
 - (ii) any "other insurance" clause contained in the master policy shall expressly exclude individual Owners' policies from its operation;
 - (iii) until the expiration of ten (10) days after the insurer gives notice in writing to the Mortgagee of any Unit, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit, the other Owners, the Board of Directors, or any of their agents, employees, or household members, nor be canceled for nonpayment of premiums;
 - (iv) the master policy may not be canceled, substantially modified, or subjected to nonrenewal without at least ten (10) days prior notice in writing to the Board of Directors and all Mortgagees of Units; and
 - (v) an agreed value endorsement and an inflation guard endorsement.
- (b) All policies of insurance shall be written with a company licensed to do business in the State of Georgia. The company shall provide insurance certificates to each Owner and each Mortgagee upon request.
- (c) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (d) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees. Each Owner shall notify the Board of Directors of all structural improvements made by the Owner to his or her Unit. Any Owner who obtains an individual insurance policy covering any portion of the Condominium, other than improvements and betterments made by such Owner at his or her expense and personal property belonging to such Owner, shall file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after the purchase of such insurance.

Such Owner shall also promptly notify, in writing, the Board of Directors in the event such policy is cancelled.

- (e) In addition to the insurance required hereinabove, the Board shall obtain as a Common Expense:
- (i) workers' compensation insurance if and to the extent necessary to meet the requirements of law;
 - (ii) public liability insurance in amounts no less than required by Section 44-3-107 of the Act, as amended, and officers' and directors' liability insurance in such amounts as the Board may determine. The public liability insurance shall contain a cross liability endorsement;
 - (iii) fidelity bonds, if reasonably available, covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds. Such bonds, if reasonably available, shall be in an amount consistent with the best business judgment of the Board of Directors, but in no event less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on the implementation of financial controls which take one or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two (2) members of the Board of Directors must sign any checks written on the reserve account; and such other insurance as the Board of Directors may determine to be necessary or desirable including, for example, coverage of the following types of property contained within a Unit, regardless of ownership: (A) fixtures, improvements and alterations that are part of the building or structure; and (B) appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping.
- (f) Insurance carried by the Association as a Common Expense shall not be required to include: (i) any part of a Unit that is not depicted on the original Survey and Floor Plans; or (ii) any part of a Unit that was not included as part of the collateral for the initial-loan-made-for the initial purchase of the Unit, nor shall the Association include public liability insurance for individual Owners for liability arising within the Unit.
- (g) Nothing contained herein gives any Owner or other party a priority over any rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Unit on which there is a Mortgagee endorsement shall be disbursed jointly to such Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee.
- (h) Every Owner shall be obligated to obtain and maintain at all times insurance covering those portions of his or her Unit to the extent not insured by policies maintained by the Association. Upon request by the Board, the Owner shall furnish a copy of such insurance policy or policies to the Association. In the event that any such Owner fails to obtain insurance as required by this

subparagraph, the Association may purchase such insurance on behalf of the Owner and assess the cost thereof to the Owner, to be collected in the manner provided for collection of assessments under Paragraph 10 hereof.

- (i) Insurance Deductibles. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the Person or Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one (1) Unit or a Unit and the (i) Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected owner's portion of the total cost of repair. Notwithstanding the foregoing, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Owner shall be responsible for paying the deductible pertaining to his or her Unit, if any. If any Owner or Owners fail to pay the deductible when required under this subparagraph, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to Paragraph 8 of this Declaration; provided, however, where the deductible is for insurance required under the Act, no Owner shall be assigned more than Two Thousand Five Hundred Dollars (\$2,500), or such higher amount as authorized by the Act, as the cost of the deductible for any one (1) occurrence.
- (j) Payment of Claims to Delinquent Owners. Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of assessments owed to the Association under Paragraph 10 hereof, then the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

12. REPAIR AND RECONSTRUCTION.

In the event of damage to or destruction of all or any part of the Condominium as a result of fire or other casualty, unless eighty percent (80%) of the Owners, including the Owner or Owners of any damaged Unit or Units, vote not to proceed with the reconstruction and repair of the structure(s), the Board of Directors or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in the Condominium Instruments shall be construed to afford a priority to any owner with respect to the distribution of proceeds to any such Unit.

- (a) Cost Estimates. As soon as reasonably possible after a fire or other casualty causing damage to the Condominium, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Unit) to substantially the condition that existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds or insurance as the Board of Directors determines to be necessary.
- (b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to failure of the Association to maintain coverage as provided in Paragraph 11 of this Declaration, the additional cost shall be a Common Expense. If, for any reason, the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair, as determined by the Board, the additional costs shall be assessed against the Owners

of the Unit(s) damaged in proportion to the damage to the Units or against all Owners, in the case of insufficient funds to cover damage to the Common Elements. This assessment shall not be considered a special assessment as discussed in subparagraph 10(e). If there are surplus funds after repair and reconstruction is completed, such funds shall be common funds of the Association to be used as directed by the Board.

- (c) Floor Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the Floor Plans and specifications under which the Condominium was originally constructed to include fixtures initially installed by Declarant, but not any improvements or additions (including wall coverings and fixtures) made by or on behalf of any Owner, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original Floor Plans and specifications were approved by the Board of Directors. To the extent insurance proceeds are available, the Association may reconstruct or repair Owner improvements damaged as a result of fire or other casualty.
- (d) Encroachments. Encroachments upon or in favor of Units that may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Condominium was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.
- (e) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Owners on account of such casualty shall constitute a construction fund that shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Paragraph to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the structures as are designated by the Board of Directors.

13. ARCHITECTURAL CONTROLS.

- (a) During Declarant Control. During the time in which Declarant has the right to appoint directors and officers of the Association under Article III, Part A, Section 2 of the Bylaws, there shall be no Architectural Control Committee and all encroachments onto the Common Elements or Limited Common Elements, exterior change, alteration or construction (including painting and landscaping), and any erection, placement or posting of any object, sign, clothesline, speaker, playground equipment, light, fountain, flag, personalized or customized exterior door mat, or thing on the exterior or roofs of the buildings, in any windows (except window treatments as provided herein), or on any Limited Common Elements or any Common Elements, must receive the prior written approval of Declarant. However, a mezuzah or comparable religious symbol not larger than three inches (3") in width and nine inches (9") in height may be posted on the door frame of the Unit. In addition, reasonable seasonal decorative lights may be displayed between Thanksgiving and January 15. Granting or withholding such approval shall be within the sole discretion of Declarant. All references in the Condominium Instruments to the Architectural Control Committee or ACC shall refer to Declarant during the period Declarant has the right to appoint the officers and directors of the Association. Notwithstanding anything to the contrary stated herein, the initial improvements constructed on the Condominium and all architectural modifications thereto that are made by Declarant shall not be subject to approval pursuant to this

Paragraph.

- (b) After Declarant Control. After such time as Declarant's rights to appoint officers and directors of the Association as provided in Article III, Part A, Section 2 of the Bylaws has expired, an Architectural Control Committee shall be appointed by the Board of Directors and except for Declarant, so long as Declarant shall own a Unit for sale, no Owner, Occupant, or any other person may make any encroachment onto the Common Elements or Limited Common Elements, or make any exterior change, addition, alteration, or construction (including painting and landscaping), nor erect, place or post any object, sign, clothesline, speaker, playground equipment, light, fountain, flag, personalized or customized exterior door mat, or thing on the exterior or roofs of the buildings, in any windows (except window treatments as provided herein), on any Limited Common Elements, or on any other Common Elements, without first obtaining the written approval of the ACC. However, a mezuzah or comparable religious symbol not larger than three inches (3") in width and nine inches (9") in height may be posted on the door frame of the Unit. In addition, reasonable seasonal decorative lights may be displayed between Thanksgiving and January 15. The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing buildings, Units and structures, the location in relation to surrounding structures and topography, and the impact of such approval, if any, on the increase or decrease of sounds and vibrations between the Units and between the Units and the Common Elements. Notwithstanding the above, Declarant shall not be required to obtain any approvals under this Paragraph.
- (c) Alteration of Units. Subject to the other provisions of this Declaration, alterations to the interiors of Units, relocation of the boundaries between adjoining Units, and subdivision of Units are subject to the following restrictions:
- (d) Alterations to the Interiors of the Units. Except as provided herein, no Owner or Occupant may make any alteration within a Unit which involves connecting to Common Element pipes, lines, conduits and/or other apparatus for access to common utilities without prior written ACC approval. Except as provided herein, no Owner or Occupant shall make any interior modifications to or place an excessive load on any structural or load bearing portions of a Unit without first obtaining the prior written approval of the ACC. Such approval shall not be granted by the ACC unless the Owner has presented to the ACC a report or drawing prepared by a licensed structural engineer showing that compensating measures will be taken to ensure the structural integrity of the Unit and the Condominium. All building code requirements must be complied with and necessary permits and approvals secured for any modifications. Notwithstanding the above, all Owners desiring to make any interior modifications or alterations to a Unit affecting the Common Elements or structure or load bearing portions of a Unit must make application to the ACC as described below in order for the ACC to make the determination of whether the ACC's approval is required.

Notwithstanding the above, if any Owner acquires an adjoining Unit, such Owner shall have the right (subject to the prior written approval of the Mortgagees of the Units involved) to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may, in whole or part, be part of the Common Elements, so long as no portion of any structural or load bearing portions of the Unit(s) are materially weakened or removed and the ACC has approved the plans described above and no portion of any Common Elements is damaged, destroyed or endangered, other than that partition and any chutes, flues, ducts, conduits, wires or other apparatus contained therein which shall be

relocated by such Owner if such facilities serve any other part of the Condominium. Notwithstanding the above, Declarant shall not be required to obtain any approvals under this Paragraph. The alterations permitted in this Paragraph shall not be deemed an alteration or relocation of boundaries between adjoining Units as defined in O.C.G.A. § 44-3-91.

- (e) Relocation of Boundaries. Boundaries between adjoining Units shall not be relocated; provided, however, Declarant shall have the right to relocate boundaries between Units owned by Declarant without the approval of the Board of Directors, and the Board of Directors shall execute the required amendment to the Declaration.
- (f) Subdivision of Units. No Unit shall be subdivided into a smaller Unit or Units.
- (g) Applications. Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. Once an application and all required information is received by the ACC, the ACC shall stamp the application as being complete and shall then forward to the applicant a written notice of application completion (the "Notice of Application Completion"). The ACC shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction that is not in conformance with approved plans. The Board or ACC may publish written architectural standards for exterior and Common Element alterations or additions, and any request in substantial compliance therewith shall be approved; provided, however, each such requested change shall be in harmony with the external design of the existing buildings and Units and the location in relation to surrounding structures and topography of the vicinity.

In the event that the ACC fails to approve or to disapprove such application within forty-five (45) days after the date of the Notice of Application Completion, ACC approval will not be required and this Paragraph will be deemed complied with; provided, however, even if the requirements of this Paragraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the Bylaws, or the rules and regulations of the Association.

- (h) Appeal. In the event that the ACC or its designated representative disapproves any application or part thereof, an Owner shall have the right to appeal the ACC's decision to the Board of Directors. The Board shall rule on the appeal within forty-five (45) days of receiving written notice requesting an appeal from the Owner. In ruling on the appeal, the Board shall consider all relevant materials presented to it by either the Owner or the ACC, the decision of the ACC, and the application of the Owner to the ACC. The Board of Directors shall have the final authority to approve, disapprove, or conditionally approve or disapprove the application of the Owner. If the Board does not receive written notice from the Owner by certified mail requesting an appeal within fourteen (14) days from the date of the ACC's notice to the Owner of its decision, the decision of the ACC shall become final and all rights of appeal shall terminate and thereafter be void.
- (i) Encroachments onto Common Elements. The ACC, subject to this Paragraph, may permit Owners to make encroachments onto the Common Elements as it deems acceptable.
- (j) Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of him or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and

insurance of such change, modification, addition, or alteration, unless otherwise agreed to in writing by the ACC. It is the responsibility of every Owner of a Unit to- determine- for him or herself- what-architectural modifications have been made to his or her Unit by any predecessor-in-interest. In the discretion of the Board or ACC, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of him or herself and all successors-in-interest.

- (k) Limitation of Liability. Review and approval of any application pursuant to this Paragraph is made on the basis of aesthetic considerations only, and neither Declarant, the Board of Directors nor the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board of Directors, the ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Unit.
- (l) No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors and ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. Each Owner further acknowledges that the Board of Directors and ACC may adopt different architectural standards for different parts of the condominium, based on street visibility and location of the proposed modification in the building. The approval of either the Board of Directors or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board of Directors, or the ACC shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.
- (m) Enforcement. Any construction, alteration, or other work done in violation of this Paragraph shall be deemed to be nonconforming. Upon written request from the Board or the ACC, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorneys' fees, may be assessed against the benefited Unit and collected as an assessment pursuant to this Declaration.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions. Furthermore, the Board shall have the authority to record in the Gwinnett County land records notices of violation of the provisions of this Paragraph.

If any Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Elements or Limited Common Elements in violation of this Paragraph, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction be removed or that it remain on the Common Elements or Limited Common Elements without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction.

- (n) Commencement of Construction. All changes, modifications and improvements approved by the ACC hereunder must be commenced within six (6) months from the date of approval. If not commenced within six (6) months from the date of such approval, then such approval shall be deemed revoked by the ACC unless the ACC gives a written extension for commencing the work. All work approved by the ACC hereunder shall be completed in its entirety within ninety (90) days from the date of commencement, unless otherwise agreed in writing by the ACC. All approved changes, modifications, and improvements must be completed in their entirety. An Owner may not construct only a portion or part of an approved change, modification, or improvement.

14. USE RESTRICTIONS.

Each Owner of a Unit shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of the Condominium Instruments and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to any rights the Association may have against the Owner's family, guests, tenants or Occupants, as a result of such person's violation of the Condominium Instruments, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or Occupants.

In addition to the following use restrictions, the Board of Directors may adopt rules and regulations in accordance with the terms hereof and as specified in the Bylaws.

- (a) Use of Units. Each Unit shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Unit or any part of the Condominium, except that the Owner or Occupant residing in a Unit may conduct ancillary business activities (a home office) within the Unit so long as:
- (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the Unit;
 - (ii) the business activity does not involve visitation of the Unit by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential Unit without business activity;
 - (iii) the business activity is legal and conforms to all zoning requirements for the Condominium;
 - (iv) the business activity does not unreasonably increase traffic in the Condominium in excess of what would normally be expected for residential Units in the Condominium without business activity (other than by a reasonable number of deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);
 - (v) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;
 - (vi) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of

other residents of the Condominium, as determined in the Board's discretion; and

- (vii) the business activity does not result in a materially greater use of common element facilities or Association services.

The terms "business" and "trade," as used herein, shall have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the use of a Unit by an on-site management agent operating on behalf of the Association shall not be considered a trade or business within the meaning of this Paragraph.

- (b) Number of Occupants. The maximum number of Occupants in a Unit shall be limited to two (2) people per bedroom in the Unit, (as such bedrooms are depicted on the original Survey and Floor Plans filed in the Gwinnett County, Georgia records). Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto.

If an Owner of a Unit is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the person(s) who will occupy the Unit, the designated person(s) to occupy the Unit may not be changed more frequently than once every six (6) months without the express written consent of the Board as determined in the Board's sole discretion.

- (c) Outbuildings. No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected by any Owner or Occupant, other than Declarant, on any portion of the Condominium, at any time, either temporarily or permanently, without the prior written approval of the Board.
- (d) Use of Common Elements Including Amenities. There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Elements without the prior written consent of the Board, except as specifically provided herein. With prior written Board approval, and subject to any restrictions imposed by the Board, an Owner may reserve portions of the Common Elements for use for a period of time as set by the Board. Any such Owner who reserves a portion of the Common Elements as provided herein shall assume, on behalf of him or herself and his or her guests, Occupants and family, all risks associated with the use of the Common Elements and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees. There shall be no use of the roofs of the Condominium buildings by the Owners, their family members, guests, tenants, invitees, agents or contractors. The Association and its agents and contractors shall have access to the roofs for performing its maintenance and repair responsibility. There shall be no gardening or landscaping on the Common Elements by Owners or Occupants without the prior written consent of the Board. This subparagraph shall not apply to Declarant, for so long as Declarant shall own a Unit for sale.

- (e) Use of Limited Common Elements, Storage Spaces, Porches, and Patios. Except as otherwise provided herein, the use of the Limited Common Elements assigned to the Units is restricted exclusively to the Owners of the Unit to which such Limited Common Elements are assigned, and said Owner's family members, guests, tenants and invitees. The Limited Common Elements are reserved for exclusive use, but shall not be construed or interpreted to be separate and apart from the Common Elements in general, and the restrictions applicable to the Common Elements shall also apply to the Limited Common Elements.
- (i) Storage Spaces. Storage spaces located within a Unit shall be used solely for the purpose of storing any personal property belonging to the Owner or Occupant of the Unit. No Owner or Occupant shall store any explosives, or any flammable, odorous, noxious, corrosive, hazardous or pollutant materials or any other goods in the space that would cause danger or nuisance to the storage space or the Condominium. The storage space shall not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code, or health code. If hazardous substances are stored, used, generated or disposed of on or in the storage space or if the storage space becomes contaminated in any manner for which the Owner or Occupant thereof is legally liable, Owner or Occupant shall indemnify and hold harmless Declarant, Association and Board of Directors from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses and any and all sums paid from settlement of claims, attorneys' fees, consultant and expert fees, arising as a result of that contamination by Owner or Occupant.
- (ii) Porches and Patios. Objects over forty-two (42) inches in height, grills, bicycles, laundry garments, towels and objects other than potted plants and patio furniture, except as may be authorized by the Board, shall not be placed on a porch or patio. Penetration of the surfaces of a porch or patio wall or floor is prohibited. Enclosure of a porch or patio is also prohibited. As used herein, "enclosure" shall mean the permanent enclosure of a porch or patio into the heated and cooled space within the boundaries of a Unit.
- (f) Prohibition of Damage, Nuisance and Noise. Without the prior written consent of the Board of Directors, nothing shall be done or kept on the Condominium, or any part thereof, which would increase the rate of insurance on the Condominium or any Unit or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

The Units in the Condominium are built in close proximity to one another, resulting in the sharing of common walls, floors and ceilings. As a result, noise and vibration may be detectable between Units or between Units and the Common Elements. Therefore, an Owner or Occupant shall not conduct activities within a Unit or use a Unit in a manner that interferes with or causes disruption to the use and quiet enjoyment of another Unit by its respective Owner and Occupant.

Furthermore, noxious, destructive or offensive activity shall not be carried on within any portion of the Condominium. No Owner or Occupant of a Unit may use or allow the use of the Unit or any portion of the Condominium at any time, in any way or for any purpose which may endanger the health, unreasonably annoy or disturb or cause embarrassment, or discomfort to other Owners or Occupants, or in such a way as to constitute, in the sole opinion of the Board of Directors, a nuisance. In addition, no Owner or Occupant of a Unit may use or allow the use of a Unit or the Common Elements in any manner which creates disturbing noises, including, without limitation, use of stereo speakers or equipment that will in the sole discretion of the Board of Directors

interfere with the rights, comfort or convenience of the other Owners or Occupants. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights.

No Owner, Occupant or agent of such Owner or Occupant shall do any work which, in the reasonable opinion of the Association's Board of Directors or its designee, would jeopardize the soundness or safety of the Condominium or any structure created thereon, would reduce the value thereof, or would impair any easement or other interest in real property thereto, without in every such case the unanimous, prior written consent of all members of the Association and their Mortgagees.

No damage to or waste of the Common Elements, or any part thereof, shall be permitted by any Owner or member of his or her family or any invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees, or Occupants of his or her Unit.

- (g) Firearms and Fireworks. The display or discharge of firearms or fireworks on the Common Elements or Limited Common Elements is prohibited; provided, however, the display of lawful firearms on the Common Elements or Limited Common Elements is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Elements or Limited Common Elements to or from the Owner's Unit. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A. § 25-10-1, as amended.
- (h) Animals. No Owner or Occupant may keep any animal on any portion of the Condominium except as expressly permitted in this subparagraph. An Owner or Occupant may keep no more than a total of two (2) dogs and/or cats per Unit and a reasonable number of other generally recognized household pets, as determined in the Board's sole discretion, weighing less than two (2) pounds each (including by way of illustration, but not limitation, fish, gerbils and small birds).

No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose, and no structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Elements, including Limited Common Elements, without prior written ACC approval. No pets are allowed on any portion of the Common Elements; provided, however, an Owner or Occupant may walk a pet across the Common Elements to enter or exit the Condominium property. Notwithstanding the foregoing, pets must be kept on a leash and be under the physical control of a responsible person at all times while on the Common Elements, but excluding the Limited Common Elements; provided, however, pets need not be leashed within fenced patio or porch areas when attended by a person. Feces left upon the Common Elements by pets must be immediately removed by the owner of the pet or the person responsible for the pet.

No potbellied pigs, venomous snakes, pit bulldogs, Rottweilers, Doberman Pinschers, may be brought onto or kept on the Condominium at any time. In addition, other animals determined in the Board's sole discretion to be dangerous shall not be brought onto or kept on the Condominium at any time. The Board may require that any pet that, in the Board's opinion, endangers the health of any Owner or Occupant or creates a nuisance or unreasonable disturbance, be permanently removed from the Condominium upon seven (7) days written notice. If the Owner or Occupant fails to do so, the Board may remove the pet. The Board may remove any pet, which, in the Board's

sole discretion, presents an immediate danger to the health, safety or property of any community member, without prior notice to the pet's owner.

Any Owner or Occupant who keeps or maintains any pet upon the Condominium shall be deemed to have agreed to indemnify and hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Condominium.

- (i) Parking. Vehicles permitted under this subparagraph (i) shall be parked in areas specified herein or in designated areas authorized in writing by the Board. No Owner or Occupant may keep or bring onto the Condominium more than a reasonable number of vehicles, at any time, as determined by the Board. All vehicles of an Owner or Occupant shall be parked within a garage or on a Limited Common Element driveway appurtenant to a Unit. Owners and Occupants are prohibited from parking on yard areas, along the roadways of the Condominium, or on any exterior parking space located on the Condominium for any period of time.

Disabled and stored vehicles are prohibited from being parked on the Condominium, except in garages. For purposes hereof, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Condominium without being driven for fourteen (14) consecutive days or longer without prior written Board permission.

Boats, trailers, jet-skis and trailers for same, panel trucks, buses, trucks with a load capacity of one (1) ton or more, vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), recreational vehicles (RVs and motor homes), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors other than Sheriffs, Marshals, or police officers' vehicles marked as such, are also prohibited from being parked on the Condominium, except in garages or other areas, if any, that may be designated by the Board as parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the Common Elements during normal business hours for the purpose of serving any Unit or the Common Elements; provided, however, no such vehicle shall remain on the Common Elements overnight or for any purpose unless prior written consent of the Board is first obtained.

If any vehicle is parked on any portion of the Condominium in violation of this Paragraph or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed or booted. The notice shall include the name and telephone number of the person or entity that will do the towing or booting and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed or booted in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's Unit, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the Board or agent of the Association may have the

vehicle towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot,

- (j) Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to any portion of the Condominium, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" position and at a minimum temperature setting of fifty-five degrees (55°) Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two degrees (32°) Fahrenheit or below. Owners and Occupants of Units shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. The Board of Directors may fine any Owner or Occupant and/or may cause the water service to the violator's Unit to be discontinued for violation of this subparagraph, in addition to any other remedies of the Association.
- (k) Signs. Except as may be provided for herein or as may be required by legal proceedings, and except for signs which may be erected by Declarant related to the development and sale of Units, no signs, advertising posters, flyers, political placards or billboards of any kind shall be erected, placed, or permitted to remain on the Condominium without the prior written consent of the Board or its designee, except that one (1) professional security sign not to exceed six inches (6") by six inches (6") in size may be displayed from within a Unit. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association.
- (l) Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Elements or Limited Common Elements outside the Unit, temporarily or otherwise, except in trash receptacles that will be stored within the Unit, except as provided herein. Rubbish, trash, and garbage shall be disposed of in sealed bags and placed in the area designated by the Association for collection, or proper receptacles designated by the Board for collection. No such receptacle or rubbish, trash, and garbage shall be placed outside of the Unit more than twelve (12) hours before such items are scheduled to be collected from the Condominium. All receptacles shall be removed within twelve (12) hours of the time upon which rubbish, trash, and garbage was scheduled to be collected from the Condominium.

The Board of Directors shall be authorized to designate one (1) company to provide exclusive trash removal services to the entire Condominium on certain designated day(s); provided, however, the costs of such trash removal services shall not be a Common Expense of the Association, and shall be an individual expense of each Owner of a Unit.

- (m) Unightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Condominium. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Unit.

- (n) Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited unless approved in writing by the Board of Directors.
- (o) Garages. It is prohibited for an Owner or Occupant of a Unit that includes a garage to convert such garage to any other use. No Owner or Occupant of a Unit that includes a garage shall park his or her car or other motor vehicle on any portion of the Condominium, including a driveway, other than in the garage, unless the maximum number of cars or similarly sized motor vehicles which can be parked in the garage according to its design capacity are already parked in said garage. Garage doors shall remain closed at all times, except for necessary use, ingress, and egress. All garages shall be maintained in such a manner that parking for the maximum number of motor vehicles for which it was originally designed to hold is allowed and possible.
- (p) Window Treatments. All windows in Units must have window treatments. The color of all window treatments visible from outside the Unit must be white or off-white. Bed sheets shall not be used as window treatments.
- (q) Antennas and Satellite Dishes. Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Condominium, including the Unit or Limited Common Elements; provided, however, the Association shall have the right to erect, construct and maintain such devices. The following shall apply to all Owners:
 - (i) No transmission antenna, of any kind, may be erected anywhere on the Condominium, including the Units, without written approval of the Board of Directors or the Architectural Control Committee.
 - (ii) No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one meter in diameter shall be placed, allowed or maintained upon the Condominium, including the Units and the Limited Common Elements.
 - (iii) DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, both as may be amended from time to time.

In the event of a transfer of the Unit which includes a satellite dish or antenna, the Grantee shall assume all responsibility for the satellite dish or antenna and shall comply with this Declaration, the Bylaws and the rules and regulations regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dish or antenna.
- (r) Grilling. The use of outdoor grills other than electric grills on any portion of the Condominium buildings, including, without limitation, a porch or patio shall be governed by applicable state laws and local ordinances having jurisdiction over the Condominium.
- (s) Abandoned Personal Property. Personal property, other than vehicles as provided for in subparagraph (i) shall not be kept, or allowed to remain for more than twenty-four (24) hours upon any portion of the Common Elements, other than on a Limited Common Element, without prior written Board permission. If the Board determines that a violation exists, then, not less than two

(2) days after written notice is placed on the personal property and/or on the front door of the property owner's Unit, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine and shall have no obligation to return, replace or reimburse the owner of the property. The notice shall include the name and telephone number of the person or entity that will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner; provided, however, in such case, the Board shall give the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed.

Neither the Association nor any officer or agent thereof shall be liable to any person for any claim of damage resulting from the removal activity in accordance herewith. The Board may elect to impose fines or use other available remedies, rather than exercise its authority to remove property hereunder.

- (t) Sale Period. Notwithstanding any provisions contained in this Declaration to the contrary, during the period of the sale of the Units it shall be expressly permissible for Declarant, its contractors, agents, employees, assigns and representatives, to maintain and carry on, upon such portion of the Condominium as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the completion and sale of the Units, including, but without limitation, business offices, signs, model Units and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use the parking facilities on the Condominium for such purposes and to use the Units owned by Declarant as model Units and as offices for the sale of the Units and related activities.
- (u) Life-Safety Systems. Owners and Occupants shall not tamper with or disengage any portion of the life-safety systems that serve the Condominium and all fire control devices (such as smoke detectors and call boxes), regardless of whether such items are located within the boundaries of a Unit.
- (v) Transient Tenants. No transient tenants or Occupants shall be accommodated in a Unit.

15. LEASING.

So long as required by applicable City of Peachtree Corners ordinance, no more than fifteen percent (15%) of the total number of Units may be rented.

16. SALE OF UNITS.

An Owner intending to make a transfer or sale of a Unit or any interest in a Unit shall give written notice to the Board of Directors of such intention within seven (7) days after execution of the purchase agreement (in the case of the purchase of a Unit) or the transfer or sales documents (in the case of the conveyance of a Unit without a purchase of said Unit). The Owner shall furnish to the Board of Directors as part of the notice (a) the name and address of the intended grantee; and (b) such other information as the Board of Directors may reasonably require. In addition, the purchase agreement or transfer documents shall attach a copy of this Declaration and the Bylaws. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

In addition, a non-refundable Capital Contribution Fee shall be paid to the Association by the purchaser of a Unit at the closing or each sale or resale of a Unit in the amount of two (2) months of the general assessment charges to such Unit in accordance with Paragraph 10 of this Declaration; provided, however, the Capital Contribution Fee shall not be due from any grantee of a Unit who obtains title pursuant to judicial or nonjudicial foreclosure of any first Mortgage of record or secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Unit).

Within seven (7) days after receiving title to a Unit, the new Owner of the Unit shall give written notice to the Board of Directors of his or her ownership of the Unit. Upon failure of an Owner to give the required notice within the seven (7) day time period provided herein, the Board may levy fines against the Unit and the Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

17. MAINTENANCE RESPONSIBILITY.

- (a) By the Owner. Each Owner shall have the obligation to maintain and keep in good repair all portions of his or her Unit and all improvements made by the Owner to the Limited Common Elements assigned to the Unit except any portion of a Unit that is expressly made the maintenance obligation of the Association as set forth in Subparagraph (b) below. This maintenance responsibility shall include, but not be limited to the following: all glass surfaces (including exterior cleaning), windows, window frames (including the cleaning of the exterior window frames, but excluding the periodic painting and/or staining of the exterior window frames), casings and locks (excluding exterior caulking of windows); all doors, doorways, door frames, and hardware that are part of the entry system of the Unit (including the cleaning of the exterior surface of entry doors and door frames of the Condominium, but excluding the periodic painting and/or staining of the exterior surface of entry doors and door frames of the Condominium); all portions of the heating and air conditioning system, including the air conditioning compressor and the fan coil serving the Unit; all water heaters within the Unit boundaries (that the Owner must individually install, maintain and insure) and all pipes, lines, ducts, conduits, or other apparatus that serve only the Unit, whether located within or without a Unit's boundaries (including all electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits, or other apparatus serving only the Unit).

In addition, each Owner shall have the responsibility:

- (i) To keep in a neat, clean and sanitary condition any Limited Common Elements serving his or her Unit.
- (ii) To perform his or her responsibility in such manner so as not to unreasonably disturb other Persons in other Units.
- (iii) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.
- (iv) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her employees, tenants, invitees, Occupants, agents or guests, with the cost thereof to be added to

and become part of the Owner's next chargeable assessment.

- (b) By the Association. The Association shall maintain and keep in good repair as a Common Expense the "Area of Common Responsibility," which includes the following:
- (i) all Common Elements, including Limited Common Elements; provided, however, the cost of maintenance and repair of Limited Common Elements may be assessed against the Owner(s) to whom the Limited Common Element is assigned under Subparagraph 8(b);
 - (ii) all portions of the roofs and roof support systems (including, but not limited to roof joists and trusses, crossbeams, roof decking and underlaying, shingles and other covering and surface materials) even if such items are located within an attic space assigned to a Unit as a Limited Common Element;
 - (iii) periodic painting, staining and/or cleaning of the exterior facade and surfaces of the Buildings; and periodic painting and/or staining of the exterior window frames, door frames and doors of the Condominium (including the interior and exterior side of the entrance door to each Building and the exterior side of any door that comprises a boundary to a Unit) on a schedule to be determined by the Board of Directors;

Except to the extent that insurance required to be maintained or maintained by the Association covers any damage or loss and except as otherwise provided herein, the Association shall not be responsible for any maintenance or repair to any Unit.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or Occupant that is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Elements) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts such maintenance or repair.

The Association shall repair incidental damage to any Unit resulting from performance of work that is the responsibility of the Association. As finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready." Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Board of Directors shall have the authority to delegate to such Persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

The Association shall not be liable for injury or damage to Person or property caused by the elements or by the Owner of any Unit, or any other Person, or resulting from any utility, rain, snow or ice that may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment that the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Unit or such Owner's Occupant, guest or invitee for loss or damage, by theft or otherwise, of any property that may be stored in or upon any of the Common Elements. The Association shall not be liable to any Owner or such Owner's Occupant, guest or invitee for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Paragraph where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the

Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements that are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

- (c) Failure to Maintain. If the Board of Directors determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors.

Unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete such maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, shall become and be a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

If the Board determines that the need for maintenance or repair is in the Area of Common Responsibility and is caused through the willful or negligent act of any Owner or Occupant or their respective guests, lessees or invitees, then the Association may assess the cost of any such maintenance, repair or replacement against the Owner's or Occupant's Unit shall become a lien against the Unit and shall be collected as provided herein for the collection of assessments.

(d) Measures Related to Insurance Coverage.

- (i) The Board of Directors, upon resolution, shall have the authority to require all or any Owner(s) to do any act or perform any work involving portions of the Condominium that are the maintenance responsibility of the Owner, which will, in the Board's sole discretion, decrease the possibility of fire in or other damage to the Condominium, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring Owners to install and maintain smoke detectors, requiring Owners to certify that they have checked the batteries for their smoke detectors, requiring Owners to allow the Association to inspect the smoke detectors and replace batteries if needed on a schedule to be determined by the Board of Directors, requiring Owners to make improvements to the Owner's Unit, and such other measures as the Board may reasonably require so long as the cost of such work does not exceed Three Hundred Dollars (\$300) per Unit in any twelve (12) month period.
- (ii) In addition to, and not in limitation of, any other rights the Association may have, if any Owner does not comply with any requirement made by the Board of Directors pursuant to Subparagraph (d)(i) above, the Association, upon fifteen (15) days written notice (during

which period the Owner may perform the required act or work without further liability). may perform such required act or work at the Owner's sole cost. Such cost shall be an assessment and a lien against the Unit as provided herein. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to Subparagraph (d)(i) above, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

- (e) Mold and/or Mildew. Mold, mildew, fungi and microbiological organisms (collectively, "Mold"), are present in soil, air and elsewhere in the environment. Mold can proliferate in various environments, including, among others, damp areas such as bathrooms and within walls and partitions. Concerns have been expressed about the possible adverse effects on human health from exposure to Mold. According to the Consumer Product Safety Commission and the American Lung Association, some diseases or illnesses have been linked with biological pollutants in the indoor environment, including some forms of Mold. However, it is believed that many of these conditions may also have causes unrelated to the indoor environment. Therefore, as of the date of this Declaration, it is unknown how many potential health problems relate primarily or exclusively to indoor air quality or Mold. Declarant and the Association are not qualified and have not undertaken to evaluate all aspects of this very complex issue. Declarant and the Association have not performed any testing or evaluation of, and make no representations or warranties, express or implied, concerning the past, current or future presence or absence of Mold in the Unit, any Limited Common Elements allocated to the Unit, any unfinished perimeter walls located within the Unit, or any other Common Elements or within the vicinity of the Condominium. Declarant and the Association recommend that each Owner, at the Owner's expense conduct its own investigation and consult with such experts as the Owner deems appropriate regarding the occurrence and effects of Mold, the potential sensitivity or special risk the Owner and other individuals, who will occupy and use the Unit.

When excessive moisture or water accumulates indoors, Mold growth can and will occur, particularly if the moisture problem remains unaddressed. There is no practical way to eliminate all Mold in an indoor environment. The key to controlling indoor Mold growth is to control moisture. Each Owner shall maintain the Unit in such a manner as to reduce the potential for increased Mold formation or growth, including, without limitation, keeping vents and/or fans clear and functioning and preventing and repairing plumbing, window and other leaks and sources of moisture. Each Owner shall conduct periodic inspections of the Unit, Limited Common Elements assigned to the Unit, and any other portion of the Condominium for which the Owner is responsible to maintain, for the presence of Mold or conditions that may increase the ability of Mold to propagate within the Unit or other portions of the Condominium. Furthermore, each Owner shall monitor the Unit, and any other portion of the Condominium for which the Owner is responsible to maintain, on a continual basis for excessive moisture, water or Mold accumulation. If water or moisture is discovered in or around the Unit, the Owner shall immediately seek to eliminate the source of the water or moisture. Failure to eliminate the source of moisture can result in additional damage and the growth of Mold. Declarant will not be responsible for damages, and each Owner, by taking title to a Unit, hereby waives all rights to damages and subrogation of damages. Each Owner shall defend and indemnify Declarant and the Association and hold Declarant and the Association harmless from damages, including all cases of personal injury or property damage, caused by the presence of Mold and/or water or moisture in the Unit or other portions of the Condominium to the extent that the damages are caused by: (i) the Owner's negligence or failure to properly maintain and monitor the Unit or other portions of the

Condominium for which the Owner is responsible for maintaining, or (ii) the Owner's failure to promptly take appropriate corrective measures and minimize any damage caused by water or moisture (including, without limitation, failure to promptly notify and engage the help of appropriate professionals or experts).

18. MORTGAGEE'S RIGHTS.

- (a) Unless at least two-thirds (2/3) of the first Mortgagees and Unit Owners give their consent, the Association or the membership shall not:
 - (i) by act or omission seek to abandon or terminate the Condominium;
 - (ii) change the pro rata interest or obligations of any individual Unit for the purpose of (A) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (B) determining the pro rata share of ownership of each Unit in the Common Elements;
 - (iii) partition or subdivide any Unit in any manner inconsistent with the provisions of this Declaration;
 - (iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (the granting of easements or licenses, as authorized herein, shall not be deemed a transfer within the meaning of this clause); or
 - (v) use hazard insurance proceeds for losses to any portion of the Condominium (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such portion of the Condominium.

The provisions of this Subparagraph shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Owners where a larger percentage vote is otherwise required by the Act or the Condominium Instruments for any of the actions contained in this Paragraph.

- (b) Where the Mortgagee holding a first Mortgage of record, a secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the secondary purchase money Mortgage is the seller of the Unit) or other purchaser of a Unit obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable, nor shall the Unit be subject to a lien, for the share of the Common Expenses or assessments by the Association chargeable to such Unit that became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, the pro rate share of the Common Expense assessment levied against the Unit, as provided in this Declaration, for the applicable portion of the month in which the passage of title to the Unit occurred.
- (c) Any Eligible Mortgage Holder will be entitled to timely written notice of:
 - (i) any condemnation loss or any casualty loss that affects a material portion of the Condominium or any Unit on which there is a first Mortgage held by such Eligible Mortgage Holder.

- (ii) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a first Mortgage held by such Eligible Mortgage Holder that remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Owner of any other obligation under the Condominium Instruments that is not cured within sixty (60) days;
 - (iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
 - (iv) any proposed action that would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.
- (d) Any Eligible Mortgage Holder, or insurer or guarantor of a first mortgage on a Unit, will be entitled to timely written notice of:
 - (i) any proposed amendment of the Condominium Instruments effecting a change in (a) the boundaries of any Unit or the exclusive easement rights appertaining thereto; (b) the interests in the Common Elements or Limited Common Elements appertaining to any Unit or the liability for Common Expenses appertaining thereto; (c) the number of votes in the Association appertaining to any Unit; or (d) the purposes to which any Unit or the Common Elements are restricted;
 - (ii) any proposed termination of the Condominium;
 - (iii) any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a first Mortgage held by such Eligible Mortgage Holder;
 - (iv) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Owner of any other obligation under the Condominium Instruments which is not cured within sixty (60) days;
 - (v) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
 - (vi) any proposed action that would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.
- (e) Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.
- (f) Notwithstanding anything to the contrary herein contained, the provisions of Paragraphs 15 and 16 of this Declaration governing the leasing and sales of Units, respectively, shall not apply to impair the right of any first Mortgagee to:
 - (i) foreclose or take title to a Unit pursuant to remedies contained in its Mortgage; or

- (ii) take a deed or assignment in lieu of foreclosure; or
- (iii) sell, lease, or otherwise dispose of a Unit acquired by the Mortgagee.
- (g) No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.
- (h) Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of any mortgagee encumbering such Owner's Unit.
- (i) Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request to approve an amendment to this Declaration or within sixty (60) days or the date of the Association's request for any other action, provided that such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.
- (j) Construction of this Paragraph. Nothing contained in this Paragraph shall be construed to reduce the percentage vote that must otherwise be obtained under the Condominium Instruments or Georgia law for any of the actions set forth in this Paragraph.

19. GENERAL PROVISIONS.

- (a) **SECURITY.** THE ASSOCIATION OR DECLARANT MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS THAT DIRECTLY OR INDIRECTLY IMPROVE THE SECURITY OF THE CONDOMINIUM; HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER AGENTS, EMPLOYEES, TENANTS, GUESTS, OCCUPANTS, LICENSEES, AND INVITEES, ACKNOWLEDGES AND AGREES THAT NEITHER THE ASSOCIATION NOR DECLARANT IS A PROVIDER OF SECURITY AND NEITHER ENTITY SHALL HAVE A DUTY TO PROVIDE SECURITY ON OR AT THE CONDOMINIUM. FURTHERMORE, THE ASSOCIATION DOES NOT GUARANTEE THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE CONDOMINIUM AND COMMIT CRIMINAL ACTS ON THE CONDOMINIUM NOR DOES THE ASSOCIATION GUARANTEE THAT CRIMINAL ACTS ON THE CONDOMINIUM WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH OWNER. NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR THE INEFFECTIVENESS OF MEASURES UNDERTAKEN.
- (b) Dispute Resolution. Prior to filing a lawsuit against the Association, the Board of Directors, or any officer, director, or property manager of the Association, an Owner or Occupant must request and attend a hearing with the Board of Directors. Any such request shall be in writing and shall

be personally delivered to any member of the Board of Directors or the property manager, if any, of the Association. The Owner or Occupant shall, in such request and at the hearing, make a good faith effort to explain the grievance to the Board of Directors and resolve the dispute in an amicable fashion, and shall give the Board of Directors a reasonable opportunity to address the Owner or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board of Directors shall give notice of the date, time and place of the hearing to the Person requesting the hearing. The Board of Directors shall schedule this hearing for a date not less than seven (7) or more than twenty one (21) days from the date of receipt of the request.

- (c) Parking Spaces. Neither Declarant nor the Association shall be held liable for loss or damage arising from theft, vandalism, malicious mischief or any loss or damage resulting from water or acid damage, to any property placed or kept in any parking space in the Condominium. Each Owner or Occupant with use of a parking space who places or keeps a vehicle and/or any personal property in the vehicle or parking space does so at his or her own risk.
- (d) Unit Keys. At the request of the Association, each Owner, by acceptance of a deed to a Unit, agrees to provide the Association with a key to the Unit and the security alarm code, if any, to be used by the Association for maintenance, emergency, security or safety purposes as provided in Subparagraph 9(a) of this Declaration and for pest control, if necessary, as provided in Subparagraph 21(e) of this Declaration. Neither Declarant nor the Association shall be liable for any loss or damage due to its holding such key, or use of such key for the purposes described above and each Unit Owner shall indemnify and hold harmless Declarant, the Association and its officers and directors against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon Declarant, the Association or its officers or directors in connection with any action, suit, or other proceeding (including settlement of any such action, suit or proceeding) brought by the Unit Owner or the Unit Owner's family, tenants, guests, employees, invitees, or licensees against Declarant, the Association, its officers or directors arising out of or relating to its holding or use of such key for the purposes described above.
- (e) Right of Action. All Owners hereby acknowledge and agree that the Association shall not be entitled to institute any legal action against anyone on behalf of any or all of the Owners which is based on any alleged construction defect (as such term is defined in O.C.G.A. § 8-2-36) in any Unit, the Common Elements or the Limited Common Elements, or any damage allegedly sustained by any Owner by reason thereof, except the Association may bring an action against a Contractor to recover damages resulting from construction defects in any of the Common Elements or Limited Common Elements. Such action may be maintained only after:
 - (i) The Association first obtains the written approval of each Owner whose interest in the Common Elements or Limited Common Elements will be the subject of the action;
 - (ii) A vote or written agreement of the Owners to which at least a Majority of the votes of the members of the Association are allocated;
 - (iii) The Board and the Contractor have met in person and conferred in a good faith attempt to resolve the Association's claim or Contractor has definitively declined or ignored the requests to meet with the Board; and
 - (iv) The Association has otherwise satisfied all of the pre-action requirements for a claimant to commence an action as set forth in O.C.G.A. § 8-2-35, et seq.

Notwithstanding the above, once the Declarant no longer has the right to appoint and remove directors and officers, as set forth in Article III, Part A, Section 2 of the Bylaws, the Association's Board of Directors may negotiate the resolution of any alleged defect(s) in the Common Elements or Limited Common Elements on behalf of the Owners and shall have the right and authority to settle and release on behalf of any and all of the Owners claims, causes of action, damages and suits involving the same. Any such settlement and release shall bind all Owners and their successors and assigns. As set forth in Paragraph 22 hereof, no amendment to this Declaration shall (i) modify, alter, or delete any provision of this Declaration that benefits the Declarant or any rights, privileges, easements, protections, or defenses of the Declarant; or (ii) alter the rights of the Owners or the Association in relationship to the Declarant, without the written consent of the Declarant attached-to-and recorded. with such amendment.

- (f) Successor Declarants. Any successor to Declarant shall not be responsible or subject to liability by operation of law or through the purchase of Declarant's interest in the Condominium or any portion thereof at foreclosure or otherwise for any act, omission, or matter occurring or arising from any act, omission, or matter occurring prior to the time the successor succeeded to the interest of Declarant.
- (g) Disclosures. Each Owner and Occupant acknowledges the following:
 - (i) The Condominium is located adjacent to thoroughfares that may be affected by traffic and noise from time to time, and may be improved and/or widened in the future.
 - (ii) The initial Association budget provided to Owners is based on estimated expenses only and may increase or decrease significantly when the actual expenses of the Association become known.
 - (iii) The natural light available to and views from an Owner's Unit may change over time due to, among other circumstances, additional development and the removal or addition of landscaping.
 - (iv) No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.
 - (v) No representations are made regarding the schools that currently or may in the future serve the Unit.
 - (vi) Since in every community, there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of the Condominium property that an Owner or Occupant may find objectionable and that it shall be the sole responsibility of the Owners and Occupants to become acquainted with community conditions that could affect the Unit.
 - (vii) No representations are made that the Unit is or will be soundproof or that sound may not be transmitted from one Unit to another.
 - (viii) The Floor Plans and the dimensions and square footage calculations shown thereon are only approximations. Any Owner who is concerned about any representations regarding the Floor Plans should do his/her own investigation as to the dimensions, measurements and

square footage of his/her Unit.

- (ix) Declarant and/or Declarant's agents may be constructing portions of the Condominium and engaging in other construction activities related to the construction of the Common Elements and additional phases of the Condominium. Such construction activities may, from time to time, produce certain conditions on the Condominium, including, without limitation: (A) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (B) smoke; (C) noxious, toxic, or corrosive fumes or gases; (D) obnoxious odors; (E) dust, dirt or flying ash; (F) unusual fire or explosion hazards; (G) temporary interruption of utilities and services of the Condominium; and/or (H) other conditions that may threaten the life-safety of Persons on the Condominium. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions on the Condominium resulting from construction activities shall not be deemed a nuisance and shall not cause Declarant and/or its agents to be deemed in violation of any provision of this Declaration.
- (x) All Owners acknowledge and understand that pole lights may be installed throughout the Condominium in the future. If pole lights are added to the Condominium during the Declarant Control Period, Declarant shall have the right, but not the obligation, to loan the Association money to purchase and install the pole lights throughout the Condominium. If Declarant elects to make this loan to the Association, Declarant shall be entitled to reimbursement of all costs and expenses to purchase and install such pole lights. After installation, the pole lights shall be part of the Common Elements and the electricity for same shall be paid for by the Unit Owners as a Common Expense.
- (xi) Concrete surfaces may be cracked or may crack in the future.
- (xii) No representations are made that the Unit is or will be soundproof or that sound may not be transmitted from one Unit to another or from Common Elements or shared Limited Common Elements to a Unit. Sound transmission between Units and Common Elements, and between Units and Limited Common Elements, is inherent in multi-unit construction and is not a warrantable condition.
- (xiii) Condensation may appear on the interior portion of windows and glass surfaces, and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass.
- (xiv) The Condominium is or may be located near hospitals and health care facilities that are serviced by emergency vehicles that may use sirens.
- (xv) The Board shall be authorized to designate one (1) company to provide exclusive trash removal services to the entire Condominium on a certain designated day(s); provided, however, the costs of such trash removal services may not be a Common Expense and may be an individual expense of each Owner, as determined in the discretion of the Board.
- (xvi) Declarant shall not be responsible for responding to or taking any affirmative action on behalf of the Association or an individual member of the Association to mitigate, alleviate, remedy or cure any off-site conditions that may directly impact the Condominium or any portion thereof, and such inaction by the Declarant shall not constitute a breach of fiduciary duty by the directors and officers of the Association that are appointed by the Declarant,

pursuant to Article III, Part A, Section 2 of the Bylaws.

- (xvii) While the drainage system for surface water runoff on the Condominium will be constructed in accordance with applicable governmental standards, the Condominium may still be subject to erosion and/or flooding during unusually intense or prolonged periods of rain.
- (xviii) Each Owner and Occupant hereby grants Declarant and its agents the right to obtain and use photography of the Condominium (including the Unit) for publication and advertising purposes.
- (xix) Each Owner and Occupant consents to the Seller changing, in its sole discretion, the Condominium name and the street names and addresses in the Condominium including the street address of the Unit before or after closing.
- (xx) Alarm systems installed in the Unit, if any, shall only be installed on all first floor operable windows (lower windows only) and doors.
- (xxi) Each Owner and Occupant acknowledges that the performance and methods and practices of operating heating and cooling systems can be directly affected by the orientation and location of a room or Unit in relation to the sun. Declarant shall, therefore, have no obligation other than to install a heating and cooling system at the Unit which has been sized and designed based on industry standards for the type and size of unit to be constructed and which functions in accordance with industry standards.
- (xxii) No representations are made that the systems in the Unit including, by way of example only, heating and air conditioning and electrical systems will operate or perform at a level or standard greater than the minimum specifications of the manufacturer.
- (xxiii) No representations are made that any room, wall, ceiling or floor in any dwelling on the Unit or any pipes located therein will be soundproof.
- (xxiv) Since trees and landscaping existing on the Condominium prior to the commencement of construction thereon may be adversely affected or even killed by construction activities, Declarant and its agents shall have no responsibility for the same.
- (h) Services During Declarant Control. Each Owner acknowledges that Declarant and its affiliates may provide services utilized by communities such as this Condominium including, but not limited to, management services. Each Owner consents and agrees that the Association may enter into service contracts with Declarant and its affiliates.
- (i) Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right given to it therein or reasonably necessary to effectuate any such right or privilege.

20. EMINENT DOMAIN.

In the event of a taking by condemnation or by eminent domain, the provisions of the Act shall

prevail and govern; provided, however, any proceeds received as a result of a taking of the Common Elements (other than Limited Common Elements) by condemnation or eminent domain shall, at the option of the Board, either be allocated to the Owners pursuant to Section 44-3-97(a) of the Act, as amended, or be deposited into the Association's operating account or reserve account to be applied to Common Expenses. Each holder of a first Mortgage shall be entitled to written notice of any such condemnation proceeding, and nothing in the Condominium Instruments shall be construed to give a priority to any Owner in the distribution of proceeds with respect to such Unit.

21. EASEMENTS.

- (a) Use and Enjoyment. Each Owner and Occupant shall have a right and a non-exclusive easement of use and enjoyment in and to the Common Elements (including the right of access, ingress and egress to and from his or her Unit over those portions of the Condominium designated for such purpose), and such non-exclusive easement shall be appurtenant to and shall pass with the title to such Unit, subject to (i) the rights of the Owners to the exclusive use of the Limited Common Elements assigned to their respective Units; (ii) to the right of the Association to control the use and enjoyment of the Common Elements as provided by the terms of this Declaration including, but not limited to, the right of the Association to suspend voting and use privileges as provided herein; and (iii) the right of the Association to have access to the Units and Limited Common Elements assigned to a Unit to discharge its rights and obligations, under the Condominium Instruments, including without limitation, the repair and maintenance responsibilities of the Association.
- (b) Support. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with a non-exclusive easement of support for the benefit of such abutting Unit.
- (c) Encroachments. The Units and Common Elements shall be subject to non-exclusive easements of encroachment as set forth in the Act.
- (d) Utilities. To the extent that the sprinkler system or any utility line, pipe, wire, or conduit serving any Unit, Units or the Common Elements shall lie wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit, Units, or the Common Elements shall be burdened with a non-exclusive easement for the use, maintenance, repair and replacement of such sprinkler system, utility line, pipe, wire or conduit, such non-exclusive easement to be in favor of the Unit, Units, or Common Elements served by the same and the Association. It shall be the obligation of the benefited Owner to maintain, replace and repair any pipe, line, conduit, duct or wire owned by such Owner, even if such pipe, line, conduit, duct or wire is located within the boundaries of a Unit of another Owner. In such circumstance, the benefited Owner shall repair all incidental damage to any Unit resulting from performance of any such work. All Owners hereby covenant and agree that as finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready". Components that may require repair or replacement, such as tile and trim, will be reinstalled only to the extent of readily available materials or similar materials (trim and such will also be finished to "paint-ready"). Due to the uncontrollability of quality of repair, items such as faux paint treatment, wallpaper, ceiling/wall applique, and any other similar types of finishes, will not be the responsibility of the benefited Owner.
- (e) Pest Control. The Association may, but shall not be obligated to, dispense chemicals for the extermination of insects and pests within the Units and Common Elements. In the event the

Association chooses to provide such pest control, the Association and its duly authorized contractors, representatives, and agents shall have an easement to enter Units for the purpose of dispensing chemicals for the exterminating of insects and pests within the Units and Common Elements. Owners shall either provide a key to the Unit for purpose of such entry or have someone available at such times as are designated by the Board of Directors to allow entry into the Unit for this purpose. The Association shall not be liable for any illness, damage, or injury caused by the dispensing of these chemicals for this purpose.

- (f) Easements in Favor of the Additional Property Owner. There is reserved to Declarant and its successors and assigns, including any purchaser of the Additional Property, a non-exclusive easement upon, across, above and under all property within the Condominium (including the Common Elements and Limited Common Elements) for purposes of developing the Additional Property whether or not it is developed as part of the Condominium. In accordance therewith and until such time as Declarant or its successors record an amendment to this Declaration effecting the conversion or submission of the Additional Property (which is not required), then it shall be expressly permissible for Declarant and its successors and assigns to maintain and carry on, upon such portion of the Condominium as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient or incidental to Declarant's development of the Additional Property whether or not it is developed as part of the Condominium including, but without limitation, the following:
- (i) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Condominium;
 - (ii) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device that provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Condominium; and
 - (iii) the right to carry on sales and promotional activities on the Condominium and the right to construct and operate business offices, signs, construction trailers, residences, model Units, and sales offices. Declarant may use offices or other Units owned or used by Declarant as model Units and sales offices.

Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at his or her sole expense. This Paragraph shall not be amended without Declarant's or the Declarant's successor's and assign's express written consent, so long as the Additional Property has not been submitted to the Condominium.

(g) Easements Reserved to Declarant.

- (i) Marketing and Sales. For so long as Declarant owns any Unit primarily for the purpose of sale, Declarant and its duly authorized contractors, subcontractors, representatives, agents, associates, employees, tenants and successors and assigns shall have: (A) a non-exclusive easement for access and ingress to, egress from and use of the Common Elements for the placement and maintenance of signs, banners, balloons, decorations, marketing materials and

tables, a sales office, a leasing office, a business office, promotional facilities and model Units on any portion of the Condominium, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development, sale or lease of any Unit, or any portion thereof; and (B) a non-exclusive easement to use and enjoy the Common Elements for special events, promotional activities and grand opening celebrations. In connection with the hosting of special events, promotional activities and grand opening celebrations in the Common Elements, Declarant shall be permitted to have live entertainment, and any noise created therefrom shall not be deemed a nuisance and shall not cause Declarant and its representatives, agents, associates, employees, tenants and guests to be deemed in violation of any provision of this Declaration.

Additionally, Declarant and its duly authorized contractors, subcontractors, representatives, agents, associates, employees, tenants and successors and assigns, shall have an exclusive easement for any and all purposes it deems appropriate over, on and through Declarant's Easement Area so long as Declarant, or any successor Declarant, owns any Unit for the purpose of sale or lease.

- (ii) Inspection. Declarant hereby reserves a perpetual, non-exclusive easement for the purpose of access for ingress and egress over the Condominium, including the Units, the Common Elements, and Limited Common Elements, to inspect, examine, survey, photograph, and perform such tests, inspections, studies or other evaluations of the Condominium as Declarant and its agents, employees or contractors, or others may deem necessary in conjunction with Declarant's review of construction conditions on the Condominium. The foregoing easement shall expire upon the occurrence of the later of the following events: (A) the date upon that Declarant no longer owns any Unit; or (B) ten (10) years after the date on that this Declaration is recorded in the Official Records. To the extent that damage is inflicted on the Common Elements, Limited Common Elements, or on any Unit through that access is taken, Declarant, whether by itself or through agents, employees, contractors, or others shall be liable for the prompt repair thereof.

Notwithstanding anything to the contrary contained herein, the provisions of this Subparagraph 21(g) shall not be amended without the consent of Declarant.

22. AMENDMENTS.

Except where a higher vote is required for action under any other provision of this Declaration or by the Act, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding two-thirds (2/3) of the Total Association Vote, and the consent of Declarant for so long as Declarant owns a Unit in the Community, and such amendment shall otherwise comply with the provisions of Section 44-3-93 of the Act. Moreover, no amendment to this Declaration shall modify, alter, or delete any: (a) provision of this Declaration that benefits Declarant; (b) rights, privileges, easements, protections, or defenses of Declarant; or (c) rights of the Owners or the Association in relationship to Declarant, without the written consent of Declarant attached to and recorded with such amendment, until the later of the following: (i) the date upon which Declarant no longer owns any Unit; or (ii) ten (10) years after the date on which this Declaration is recorded in the Official Records, whichever period of time is longer.

Notice of any meeting at which a proposed amendment will be considered shall state the fact of

consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the president and secretary of the Association and recorded in the Official Records.

In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested. Material amendments are those that establish, provide for, govern or regulate any of the following:

- (A) Voting;
- (B) Assessments, assessment liens or subordination of such liens;
- (C) Reserves for maintenance, repair and replacement of the Common Elements;
- (D) Insurance or fidelity bonds;
- (E) Rights to use of the Common Elements;
- (F) Responsibility for maintenance and repair of the Condominium;
- (G) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium, except the submission of the Additional Property to the Condominium as set forth in this Declaration;
- (H) Boundaries of any Unit;
- (I) The interests in the Common Elements or Limited Common Elements;
- (J) Convertibility of Units into Common Elements or of Common Elements into Units;
- (K) Leasing of Units;
- (L) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Unit in the Condominium;
- (M) Establishment of self-management by the Association where professional management has been required by any of the agencies or corporations set forth below;
- (N) Amendment of any provisions that are for the express benefit of Eligible Mortgage holders or insurers or guarantors of first Mortgages on Units in the Condominium; and
- (O) Restoration or repair of the Condominium (after damage or partial condemnation) in a manner other than that specified in the Condominium Instruments.

Notwithstanding the foregoing, Declarant or the Board of Directors, without the necessity of a vote from the Owners, may amend this Declaration to correct any scrivener's errors, and/or comply with any applicable state, city or federal law. Furthermore, Declarant or the Board of Directors, without the necessity of a vote from the Owners, may from time to time amend and re-record the Survey and Floor Plans and record additional Surveys and Floor Plans in the Official Records, as necessary or appropriate to show all Units, Common Elements and Limited Common Elements, to clarify the description of the Units, to correct incorrect Surveys and/or Floor Plans, or to comply with the Act.

Any action to challenge the validity of an amendment adopted under this Paragraph must be brought within one (1) year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

23. SEVERABILITY.

Invalidation of any one of the covenants, conditions or restrictions contained in this Declaration by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

24. DECLARANT RIGHTS.

Notwithstanding anything to the contrary herein, and in addition to Declarant's right to appoint and remove officers and directors under Article III, Part A, Section 2 of the Bylaws and other rights set forth herein, Declarant shall have the right, as long as Declarant owns at least one (1) Unit, to conduct such sales, marketing, leasing, administrative and other activities at the Condominium as Declarant deems appropriate for the sale, marketing or leasing of any Unit and Declarant shall have a non-exclusive easement right across the Common Elements to erect signs, banners, balloons and other decorations and to conduct such other sales, marketing and leasing activities as provided herein. Declarant may also maintain any Unit it owns as a model Unit or as a sales office. The expiration of Declarant's right to appoint and remove officers and directors of the Association pursuant to Article III, Part A, Section 2 of the Bylaws shall not terminate or alter the status of the above-referenced entity and its respective successors and assigns as Declarant hereunder or divest Declarant of other rights specifically reserved to Declarant herein.

25. EXPANSION OF THE CONDOMINIUM.

Declarant reserves the option to expand the Condominium by adding to the Condominium all or any part of the Additional Property on one (1) or more occasions, to create up to forty (40) separate Units within the Condominium. Except for zoning and other governmental requirements, there are no limitations as to the location of improvements on the Additional Property. The Additional Property may be added as a whole at one time or portions may be added at different times. There are no limitations fixing the boundaries of any portion of the Additional Property that may be submitted to this Declaration, and there are no limitations regulating the order in which portions of the Additional Property may be submitted to this Declaration. This option shall expire seven (7) years from the date of recording of this Declaration; provided, however, Owners of Units to which two-thirds (2/3) of the Total Association Vote appertain, excluding any votes appurtenant to any Unit or Units then owned by Declarant, may consent to the extension of this expansion option within one (1) year prior to the date upon which the option would have otherwise expired. No assurances are made that any improvements will be made on all or any of the Additional Property that may be submitted to this Declaration. The Additional Property shall be subject to the use restrictions set forth herein when it is added to the Condominium; provided, however, in connection with

the submission of any portion of the Additional Property to the Condominium, Declarant shall be permitted to modify the use restrictions applicable to the Units located on the Additional Property by an amendment to this Declaration. Such amendment shall not require a membership vote or consent by the Association or Mortgagees. The Additional Property shall not necessarily be restricted exclusively to residential use, but shall be subject only to uses allowed by applicable zoning ordinances. No assurances are made that the units that may be built on all or any portion of the Additional Property will be substantially identical to the Units on the submitted property in any way whatsoever, including but not limited to the quality of construction, the principal materials to be used in such construction and architectural style. Declarant reserves the right to amend the Unit boundaries set forth in Paragraph 4 of this Declaration in order to describe the vertical and horizontal boundaries of those Units located on the Additional Property. Such amendment shall not require a membership vote or consent by the Association or Mortgagees. All improvements to be located on each portion of the Additional Property that is being submitted to the Condominium shall be substantially complete prior to its submission to the Condominium. Declarant shall have the right to assign Limited Common Elements on the Additional Property, which may include Limited Common Elements different from those assigned in this Declaration, it being understood that there shall be no limitations on the right to assign Limited Common Elements on the Additional Property. In addition, in the event that the Additional Property is added to the Condominium, Declarant shall have the right, but not the obligation, to assign portions of the existing Common Elements as Limited Common Elements to some or all of the Units existing as of the date of recording of this Declaration. Such assignment and amendment shall not require a membership vote or consent by the Association or Mortgagees. The percentage of undivided interest in the Common Elements appurtenant to each Unit on the submitted property shall be calculated according to the following formula: the total approximate square footage of a unit type (and variations thereof) divided by the total approximate square footage of all Units submitted to the Condominium, which quotient is divided by the number of Units of that particular unit type, and then multiplied by 100. Upon the expansion of the Condominium to include any portion of the Additional Property, the percentage of undivided interest in the Common Elements appurtenant to each Unit shall be reallocated on the same basis. Any expansion under this Paragraph shall be effected by Declarant's unilaterally executing and recording the amendments to this Declaration, the plats and the plans required by the Act, and to reflect any differences in the subsequent phase or phases as contemplated by this Paragraph, at Declarant's sole expense. The Units thereby created and added shall be owned by Declarant, but the Common Elements shall be owned by all of the Owners.

26. PREPARER.

This Declaration was prepared by Amy H. Bray, Esq., Coulter & Sierra, LLC, 1770 Indian Trail Road, Suite 440, Norcross, Georgia 30093.

[SIGNATURE ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant has executed this Declaration under seal this 15 day of May, 2024.

DECLARANT:

McKINLEY HOMES US, LLC,
A Georgia limited liability company

By: [Signature]
Name: Jinsong Yang
Its: Manager

Signed, sealed and delivered
This 15 day of May, 2024
In the presence of:

[Signature]
Unofficial Witness

Notary Public
[NOTARY SEAL]
My Commission expires:

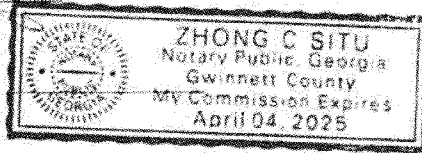


EXHIBIT "A"

DESCRIPTION OF SUBMITTED PROPERTY

Tax Parcel ID# 6300 218

All that tract or parcel of land lying and being in Land Lots 300 & 301, 6th District, Gwinnett County, Georgia and being all the property identified therein, LESS AND EXCEPT Units 7 through 40 inclusive, as more particularly described on that certain Condominium Plat For: Town Center Overlook, prepared by Robbie Henderson Surveying & Planning, containing the seal of Jesse R. Henderson, GRLS # 2985, as recorded on September 11, 2023, in Condominium Plat Book CD6, Pages 270 through 274 of the real property records of the Clerk of the Superior Court of Gwinnett County, Georgia, the specific metes and bounds being contained therein, expressly by this reference.

TOGETHER WITH

Tax Parcel ID# 6300 218

All that tract or parcel of land lying and being in Land Lots 300 & 301, 6th District, Gwinnett County, Georgia and being all the property identified as **Units 29 through 34** inclusive, as more particularly described on that certain Condominium Plat For: Town Center Overlook, prepared by Robbie Henderson Surveying & Planning, containing the seal of Jesse R. Henderson, GRLS # 2985, as recorded on September 11, 2023, in Condominium Plat Book CD6, Pages 270 through 274 of the real property records of the Clerk of the Superior Court of Gwinnett County, Georgia, the specific metes and bounds being contained therein, expressly by this reference.

TOGETHER WITH

Tax Parcel ID# 6300 218

All that tract or parcel of land lying and being in Land Lots 300 & 301, 6th District, Gwinnett County, Georgia and being all the property identified as **Units 7 through 10** inclusive, and Units 35 through 40, inclusive, as more particularly described on that certain Condominium Plat For: Town Center Overlook, prepared by Robbie Henderson Surveying & Planning, containing the seal of Jesse R. Henderson, GRLS # 2985, as recorded on September 11, 2023, in Condominium Plat Book CD6, Pages 270 through 274 of the real property records of the Clerk of the Superior Court of Gwinnett County, Georgia, the specific metes and bounds being contained therein, expressly by this reference.

EXHIBIT "B"

In connection with the expansion of the Condominium and as provided in the Declaration: (a) the undivided interest in the Common Elements allocated to each Unit shall be reallocated so that each Unit in the Condominium, including the Units submitted hereby, shall have an equal undivided interest in the Common Elements; (b) the vote allocated to each Unit shall be reallocated so that the Owner of each Unit in the Condominium, including the Units submitted hereby, shall, except as otherwise provided in the Declaration or the Act or any other recorded documents governing the Condominium, be entitled to cast one (1) vote on matters coming before the membership; and (c) the liability for Common Expenses allocated to each Unit shall be reallocated so that each Unit in the Condominium, including the Units submitted hereby, shall, except as otherwise provided in the Declaration, Bylaws, the Act be equally liable for the Common Expenses.

EXHIBIT "C"

DESCRIPTION OF ADDITIONAL PROPERTY

Tax Parcel ID# 6300 218

All that tract or parcel of land lying and being in Land Lots 300 & 301, 6th District, Gwinnett County, Georgia and being all the property identified as **Units 7 through 40**, less and except those previously submitted, as more particularly described on that certain Condominium Plat For: Town Center Overlook, prepared by Robbie Henderson Surveying & Planning, containing the seal of Jesse R. Henderson, GRLS # 2985, as recorded on September 11, 2023, in Condominium Plat Book CD6, Pages 270 through 274 of the real property records of the Clerk of the Superior Court of Gwinnett County, Georgia, the specific metes and bounds being contained therein, expressly by this reference.

EXHIBIT "D"

BYLAWS OF TOWN CENTER OVERLOOK CONDOMINIUM ASSOCIATION, INC

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BY-LAWS OF
TOWN CENTER OVERLOOK CONDOMINIUM
ASSOCIATION, INC.

ARTICLE I - NAME AND DEFINITIONS

Section 1. **Applicability.** These Bylaws provide for the self-government of Town Center Overlook Condominium Association, Inc. in accordance with the Georgia Condominium Act, O.C.G.A. § 44-3-70, *et seq.*, as may be amended from time to time (hereinafter the “Act”), the Articles of Incorporation for Town Center Overlook Condominium Association, Inc. filed with the Secretary of State of Georgia (hereinafter the “Articles of incorporation”), and the Declaration of Condominium for Old Town Center Overlook Condominium, recorded in the Gwinnett County, Georgia land records (hereinafter the “Declaration”), all as may be amended from time to time.

Section 2. **Name.** The name of the Association shall be Town Center Overlook Condominium Association, Inc. (hereinafter the “Association”).

Section 3. **Definitions.** The words used in these By-Laws shall have the same meanings as set forth in said Declaration of Condominium for Town Center Overlook Condominium (hereinafter the “Declaration”).

Section 4. **Membership.** An Owner of a Unit shall automatically become a member of the Association upon taking title to the Unit and shall remain a member for the entire period of ownership. If title to a Unit is held by more than one (1) Person, the membership shall be shared in the same proportion as the title, but there shall be only one (1) membership and the number of votes per Unit as set forth in the Declaration. Membership does not include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate an Owner’s membership. Membership shall be appurtenant to the Unit and shall be transferred automatically by conveyance of that Unit and may be transferred only in connection with the transfer of title.

Section 5. **Entity Members.** In the event an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent or representative of such legal entity shall be eligible to represent such legal entity in the affairs of the Association, including, without limitation, serving on the Board of Directors of the Association. Such person’s relationship with the Association shall terminate automatically upon the termination of such person’s relationship with the legal entity which is the Owner, and termination of the person’s relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving and such vacancy will be filled in accordance with these Bylaws.

Section 6. **Purpose.** The Association shall have the responsibility of administering the Condominium, establishing the means and methods of collecting the contributions to the Common Expenses, arranging for the management of the Common Elements of the Condominium and performing all of the other acts that may be required to be performed by the Association pursuant to the Act, the Georgia Nonprofit Corporation

Code and the Declaration. Except as to those matters which the Act, the Declaration or the Georgia Nonprofit Corporation Code specifically require to be performed by the vote of the Association, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

Section 7. Electronic Documents and Electronic Signatures.

- (a) Electronic Documents. Whenever these Bylaws require that a document, record or instrument be “written” or “in writing,” the requirement is deemed satisfied by an Electronic Document.
- (b) Electronic Signatures. Whenever these Bylaws require a signature, an Electronic Signature satisfies that requirement only if: (i) the signature is easily recognizable as a Secure Electronic Signature which is capable of verification, under the sole control of the signatory, and attached to the electronic document in such a way that the document cannot be modified without invalidating the signature; or (ii) the Board reasonably believes that the signatory affixed the signature with the intent to sign the Electronic Document, and that the Electronic Document has not been modified since the signature was affixed.
- (c) Verification and Liability for Falsification. The Board may require reasonable verification of any Electronic Signature or Electronic Document. Pending verification, the Board may refuse to accept any Electronic Signature or Electronic Document that, in the Board’s sole discretion, is not clearly authentic. Neither the Board nor the Association shall be liable to any Owner or any other Person for accepting or acting in reliance upon an Electronic Signature or Electronic Document that the Board reasonably believes to be authentic. Any Owner or Person who negligently, recklessly or intentionally submits any falsified Electronic Document or an unauthorized Electronic Signature shall fully indemnify the Association for actual damages, reasonable attorneys’ fees and expenses incurred as a result of such acts.

ARTICLE II-ASSOCIATION: MEETINGS, QUORUM VOTING, PROXIES

Section 1. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors in Gwinnett County, Georgia or as convenient thereto as is possible and practical.

Section 2. Annual Meetings. Annual meetings shall be set by the Board of Directors from time to time at any time, date and place agreed upon by the Board of Directors. If the day for the annual meeting is inadvertently set for a legal holiday, the meeting will be held at the same hour on the first day following such legal holiday (excluding Saturday and Sunday).

Section 3. Special Meetings. The President, Secretary or Treasurer 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 the Board of Directors or by a petition signed by at least twenty- five (25%) percent of the total votes of the Association. No business shall be transacted at a special meeting except as stated in the notice.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail or deliver to the record Owner of each Unit or to the Units a notice of each annual or special meeting of the Association at least

twenty-one (21) days prior to each annual meeting and at least seven (7) days prior to each special meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it is to be held. The notice of an annual meeting shall state the time and place of the meeting. If any Owner wishes notice to be given at an address other than Owner's Unit, the Owner shall have designated by notice in writing to the Secretary such other address. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered proper service of notice.

Section 5. Waiver of Notice. Waiver of notice of meeting of the Members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member specifically objects to holding the meeting or transacting business at the meeting, before the meeting is called to order. Attendance at a meeting shall also be deemed waiver of the objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member specifically objects to considering the matter when it is put to a vote.

Section 6. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. If the new date, time, and place is announced at the original meeting before adjournment, then notice need not be given of the new date, time or place. If a quorum is present, any business which might have been transacted at the meeting originally called may be transacted at the adjourned meeting.

Section 7. Voting. The voting rights of the Members shall be as set forth in the Declaration and Articles of Incorporation, which voting rights are specifically incorporated herein. Unless otherwise required by the Declaration, the affirmative vote of a Majority of the votes cast at a meeting at which a quorum is present shall be the act of the Membership.

Section 8. Proxies. At all meetings of Members, each member may vote in Person or by proxy, as further may be limited by the terms of the Declaration. All proxies shall be in writing and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable. Each proxy shall automatically cease upon a member's criteria for Membership ceasing to exist or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation. No proxy shall be valid after eleven (11) months from the date of its execution, unless otherwise provided in the proxy.

Section 9. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence in person or by proxy of at least twenty percent (20%) of the total votes existing in the Association shall constitute a quorum at all meetings of the Association.

Section 10. 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 thereat.

Section 11. Record Date. The Association may establish such record dates for Membership as may be authorized by the Georgia Nonprofit Corporation Act or applicable Georgia law.

Section 12. Action by Written Ballot. Any action to be taken at any annual, regular or special meeting of Members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot of any action shall be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirement; state the percentage of approvals necessary to approve each matter other than election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked without the consent of the Board of Directors. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of Members filed in the permanent records of the Association.

Section 13. Action by Written Consent. Any action to be taken at any annual, regular or special meeting of the Members may be taken without a meeting if one (1) or more consents, in writing, setting forth the action so taken, shall be signed and dated by Members (including the Declarant, if the consent of the Declarant is required) holding the voting power required to pass such action at a meeting held on the record date for such action. The record date for such action shall be the date that the first Member signs and consent. Such action shall be approved when the Secretary receives a sufficient number of such consents. Such action shall be approved when the Secretary receives a sufficient number of such consents. If less than unanimous consent is obtained, the approval shall be effective ten (10) days after the Secretary gives notice of the approval to all Members who did not sign a consent. Each consent shall be included in the minutes of meetings of Members filed in the permanent records of the Association. No Consent shall be valid unless: (1) the consenting Member has been furnished the same material that, pursuant to the Georgia Nonprofit Corporation Code, would have been required to be sent to members in a notice of a meeting at which the proposed action would have been submitted to the Members for action; or (2) the written consent contains an express waiver of the right to receive the material otherwise required to be furnished.

Section 14. Order of Business. The President shall establish the agenda for, and preside at, and the Secretary shall keep the minutes of, all Association meetings. The Board of Directors may establish rules of conduct and the order of business for all Association meetings. When not in conflict with the Declaration, these Bylaws, the Articles of Incorporation or meeting procedures adopted by the Board of Directors, *Robert's Rules of Order* (using the editions in effect when the meeting is noticed) shall govern all Association meetings. The Board may order the removal of anyone attending an Association meeting who, in the opinion of the Board, disrupts the conduct of business at such meeting.

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 a Board of Directors. Except as provided in Section 2 of this Article, the directors shall be Members or spouses of Members; provided, however, that no person and his or her spouse may serve on the Board at the same time. Directors do not have to reside in the Community.

Section 2. Directors During Declarant Control. The initial directors shall be selected by the Declarant, acting in its sole discretion. Declarant shall have the right to appoint and remove the members of the Board ("Declarant Control") until the first to occur of the following:

- (i) the expiration of seven years after the date on which the Declaration is Recorded;
- (ii) unless Declarant has an unexpired option to expand the Condominium in accordance with Paragraph 25 of the Declaration and the Act, the date on which Units to which four-fifths (4/5) of the undivided interests in the Common Elements appertain shall have been transferred by Declarant to Unit Owners other than a Person or Persons constituting Declarant; or
- (iii) the date on which Declarant voluntarily relinquishes such right by executing and Recording an amendment to this Declaration, which shall become effective as specified in such amendment.

The Directors selected by the Declarant need not be Members of the Association nor residents in the Community. The number of directors serving on the Declarant appointed Board shall be determined by the Declarant

Section 3. Election and Term of Office. Not later than ninety (90) days after the Declarant Control period terminates, as provided above, the Association shall call a special meeting of the Members at which the Owners shall elect three (3) directors. The term of two (2) directors shall be fixed at two (2) years and the term of one (1) director shall be fixed at one (1) year. After the expiration of the initial term of office of each director, all directors shall be elected to serve for terms of two (2) years. Members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

Section 4. Nominations of Directors. Nominations for election to the Board of Directors shall be made by any Member prior to and at the meeting at which directors shall be elected. A nominating committee may be appointed by the Board of Directors which shall seek out nominations of candidates for election to the Board of Directors.

Section 5. Vacancies. After the termination of the Declarant Control period, any vacancy in the Board of Directors arising from the resignation of a director may be filled for the unexpired term by a majority of the remaining directors then in office.

Section 6. Removal of Directors. Upon the termination of the Declarant Control period, at any regular or special meeting of the Association duly called, any one or more of the Members of the Board of Directors may be removed, with or without cause, by a majority of the Members authorized to vote for directors and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting.

B. Meetings.

Section 7. Organization Meeting. The first meeting of the Members of the Board of Directors following each annual meeting of the Membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 8. Regular Meeting. 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, but at least two (2) such meetings shall be held during each fiscal year. Notice of the time and place of each regular meeting shall be given by the secretary either personally or by telephone or by mail not less than seven (7) days or no more than thirty (30) days before such regular meeting.

Section 9. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President on his own motion or by any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. Notice of any special meeting shall be given by the secretary personally or by telephone or by mail at least twenty-four (24) hours before such meeting.

Section 10. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed or wherever 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. The waiver of notice need not specify the purpose of the meeting. A director's attendance at or participation in a meeting waives any required notice to him of the meeting unless the director at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

Section 11. Quorum: Vote Required for Action. At all meetings of the Board of Directors, the presence of a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors in attendance 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, so long as any action taken is approved by at least a majority of all of the directors.

Section 12. Compensation. No director shall receive any compensation from the Association for acting as such unless approved by a majority vote of the total vote of the Association at a regular or special meeting of the Association.

Section 13. Telephonic Meetings and Similar Meetings. Directors may participate in and hold a meeting by means of telephone or similar communication whereby all persons participating in the meeting can hear each other. Participation in such a meeting shall constitute the presence in person at the meeting except where a director participates in the meeting for the express purpose of objecting to the transaction of any business on the grounds that a meeting is not lawfully called or convened.

Section 14. Executive Session. By the majority vote of the directors at a meeting at which a quorum is present, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a sensitive nature.

Section 15. Action Without a Formal Meeting. Any action to be taken at a meeting of the Board or any action that may be taken at a meeting of the Board may be taken without a meeting if such action is evidenced by written consents, setting forth the action so taken, signed by at least a majority of the directors;

provided that such action is taken in accordance with the Georgia Non-Profit Corporation Code.

Section 16. Adjournments. A meeting of the Board of Directors, whether or not a quorum is present, may be adjourned by a majority of the directors present, to reconvene at a specific time and place. It shall not be necessary to give notice of the reconvened meeting or of the business to be transacted, other than by announcement at the meeting which was adjourned. At any such reconvened meeting at which a quorum is present, any business may be transacted which could have been transacted at the meeting which was adjourned.

C. Powers and Duties.

Section 17. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, the Act, or these By-Laws directed to be done and exercised exclusively by the Members.

Section 18. Management Agent.

- (a) 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.
- (b) No management contract may have a term in excess of one (1) year. The Board shall use reasonable efforts to enter into a management contract that permits termination by either party, without cause and without termination fee, on ninety (90) days' or less written notice.

Section 19. Decision Making and Implementation. Except to the extent otherwise specifically and expressly required by the Georgia Nonprofit Corporation Code or the Condominium Instruments, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors acting through the officers of the Association, without any further consent or action on the part of the Owners, and all agreements and determinations lawfully authorized by the Board of Directors shall be binding on the Association.

Section 20. Liability and Indemnification of Officers, Directors and Committee Members. The Association shall indemnify every officer, director, and committee member against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person is an officer, director or committee member at the time such expenses are incurred subject to the limitations below. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer, director or committee member in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The Association, in determining whether to indemnify a director, officer or committee

member, shall not impute knowledge to said director, officer or committee member from any source whatsoever; rather, any such determination shall be based on the actual knowledge of the director, officer or committee member. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers, directors and committee members may also be members of the Association), and the Association shall indemnify and forever hold each such officer, director or committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member or former officer or director may be entitled. The Association shall maintain, as a Common Expense, adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

Section 21. Director Conflicts of Interest. Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided that the director's interest is disclosed to the Board and the contract is approved by all Directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall not count for purposes of establishing a quorum of the Board. The interested director shall be entitled to be present at any meeting at which the proposed contract is discussed but shall not be entitled to discuss the proposed contract during the discussion.

ARTICLE IV - OFFICERS

Section 1. Officers. The officers of the Association shall be a President, a Secretary, and a Treasurer. The Board of Directors may elect such other officers' including a Vice President, or 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. The President, Secretary, and Treasurer shall be elected from among the Members of the Board of Directors.

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 Members. 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 of Officers. Any officer may be removed by a simple majority vote of the Board of Directors, a quorum being present, 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 be specifically conferred or imposed by the Board of Directors. The President shall be 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 officer may resign at any time by giving 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.

ARTICLE V - COMMITTEES

Section 1. General. Committees 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 at which a quorum is present are hereby authorized. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed and 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.

Section 2. Term of Appointment. Each member of a committee shall continue to serve until the next annual meeting of the Board of Directors and until his successor is appointed, unless the committee shall be sooner terminated or unless the member shall be removed from such committee or shall resign. Each member of a committee may be removed with or without cause by the Board of Directors at any time.

Section 3. Vacancies. Vacancies in the membership of any committee may be filled by appointments made in the same manner as the original appointments.

Section 4. Quorum. Unless otherwise provided in the resolution of the Board of Directors designating a committee, the presence of a majority of the committee members shall constitute a quorum. The act of a majority of the members of a committee shall be the act of the committee.

Section 5. Rules. Each committee may adopt rules for its own operation so long as such rules are approved by the Board of Directors and are not inconsistent with the Declaration, the By- Laws or the rules adopted by the Board of Directors.

ARTICLE VI- MISCELLANEOUS

Section 1. Indemnification. Indemnification of officers, directors, agents, employees and committee Members of the Association shall be as set forth in Declaration. Furthermore, The Association shall indemnify every officer, director, and committee member against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person is an officer, director or committee member at the time such expenses are incurred subject to the limitations below. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer, director or committee member in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The Association, in determining whether to indemnify a director, officer or committee member, shall not impute knowledge to said director, officer or committee member from any source whatsoever; rather, any such determination shall be based on the actual knowledge of the director, officer or committee member. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment

made by them, in good faith, on behalf of the Association (except to the extent that such officers, directors and committee members may also be members of the Association), and the Association shall indemnify and forever hold each such officer, director or committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member or former officer or director may be entitled. The Association shall maintain, as a Common Expense, adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

Section 2. Deposits. All funds of the Association shall be deposited from time to time in bank accounts or other depositories of the Association as the Board of Directors may select.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of Georgia law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Georgia law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Books and Records. The Association shall keep correct and complete books and records of the Association and its accounts and shall keep minutes of all proceedings of the Board of Directors and committees having any authority of the Board of Directors. The books and records of the Association shall be available for inspection by Members in accordance with the Declaration.

Section 5. Notices.

(a) **Method of Giving Notice.** Unless otherwise prohibited in these Bylaws, all notices, demands, bills, statements, or other communications shall be in writing and shall be given via:

- (i) Personal delivery to the addressee;
- (ii) United States mail, first class, postage prepaid;
- (iii) Statutory Overnight Delivery;
- (iv) Electronic mail; or
- (v) Facsimile.

(b) **Addressee.** Notice sent by one of the methods described in subsection (a) above shall be deemed to have been duly given:

- (i) If to an Owner, at the address, electronic mail address or facsimile number which the Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Unit of such Owner;
- (ii) If to an Occupant, at the address, electronic mail address or facsimile number which the Occupant has designated in writing with the Secretary or, if no such address has been designated, at the address of the Unit occupied; or
- (iii) If to the Association, the Board or the managing agent, at the postal address, facsimile or electronic mail address of the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary. The Secretary shall promptly provide notice to all Owners of any such change in address.

Section 6. Amendment. These Bylaws may be amended by the affirmative vote, written consent, or any combination thereof, of the members holding two-thirds (2/3) of the total votes of the Association; provided, during the period that Declarant has the right to appoint and remove the members of the Board, as provided above, these By-Laws may be amended only by the agreement of Declarant and the Units to which at least fifty-one percent (51%) of the votes in the Association pertain, exclusive of any vote or votes pertaining to a Unit or Units owned by Declarant. Notice of any meeting at which an amendment will be considered shall state that fact and the subject matter of the proposed amendment. No amendment shall become effective until it is Recorded

Section 7. Construction. Whenever the context so requires, the masculine gender shall include the feminine and neuter gender, and singular shall include the plural, and vice versa. If any provision of these By-Laws shall be invalid or unenforceable, such invalidity or unenforceability shall not affect the remaining provisions of these By-Laws.

Section 8. Severability. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws or the Declaration.

Section 9. Headings. The Article and Section headings herein contained are for convenience of reference only and shall not be deemed to impart substantive meaning to any provision of these By-Laws.

Section 10. Authority and Enforcement. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable Rules and Regulations governing the conduct, use, and enjoyment of the Common Elements only, provided that copies of all such Rules and Regulations shall be furnished to all Owners. Every Owner and Occupant shall comply with the Condominium Instruments and the Rules and Regulations, and any lack of compliance therewith shall entitle the Association to take action to enforce the terms of the Condominium Instruments and the Rules and Regulations. The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Unit, and to suspend an Occupant's right to use the Common Elements for violating the Rules and Regulations pertaining to the use of the Common Elements. In the event that any Occupant of a Unit violates the Condominium Instruments or the Rules and Regulations and a fine is imposed, notice of such violation shall be sent to the Owner and Occupant, and the fine shall first be assessed against such Occupant. The failure of the Board to enforce any provision of the Condominium Instruments or the Rules and Regulations shall not be deemed a waiver of the right of the Board to do so thereafter.

Section 11. Fining and Suspension Procedure. The Board shall not impose a fine, or suspend the right to use the Common Elements unless and until the Association has sent or delivered written notice to the violator as provided in subsection (a) below. Any such fine or fines may be effective or commence upon the sending of such notice or such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge such fine under subsection (b) below.

- (a) **Notice.** If any provision of the Condominium Instruments or the Rules and Regulations is violated, the Board shall send the violator written notice identifying the violation and fine(s) being imposed and advising the violator of the right to request a hearing before the Board to contest the violation or fine(s) or to request reconsideration of the fine(s). Fine(s) may be effective or commence upon the sending of such notice or such later date specified in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge the fine. In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines

may be imposed on a *per diem* basis without further notice to the violator.

- (b) Hearing. If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time.

Section 12. **Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of the Condominium Instruments or the Rules and Regulations by self-help or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred.

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