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Clerk, Superior Ct

DECLARATION OF CONDOMINIUM
FOR
HEMBREE CREEK CONDOMINIUM

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STATE OF GEORGIA
COUNTY OF FULTON

DECLARATION OF CONDOMINIUM
FOR
HEMBREE CREEK CONDOMINIUM

THIS DECLARATION is made on the date set forth below by Hembree Creek Associates, L.L.C., a Georgia limited liability company (hereinafter collectively referred to as "Declarant");

WITNESETH

WHEREAS, Declarant is the owner of the real property which is located in Fulton County, Georgia and is described in Exhibit "A" attached hereto and incorporated herein by this reference; and

WHEREAS, a plat related to the Condominium prepared by Construction Engineering Associates dated July 25, 1996 was filed in Condominium Plat Book 10, Page 118, Fulton County, Georgia Records; and

WHEREAS, floor plans relating to the Condominium were filed in Condominium Floor Plan Drawer Number 2, Folder Number 324, of the Fulton County, Georgia Records; and

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereto, including the improvements thereof, to the provisions of this Declaration and to the Georgia Condominium Act; and

WHEREAS, Declarant desires to reserve an option to expand the real property submitted to the provision of the Georgia Condominium Act by this Declaration so as to include all or any portion of the real property described on Exhibit "B" attached hereto and incorporated herein by this reference;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" of this Declaration, including the improvements 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 provisions of the Georgia Condominium Act and the covenants, conditions, restrictions, easements, assessments, and liens set forth 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.

DECLARATION OF CONDOMINIUM

FOR

HEMBREE CREEK CONDOMINIUM

1. NAME.

The name of the condominium is Hembree Creek Condominium (hereinafter sometimes called "Hembree Creek" or the "Condominium," as further defined herein), which condominium is a residential condominium which hereby submits to the Georgia Condominium Act, O.C.G.A. §44-3-70, et seq. (Michie 1982).

2. DEFINITIONS.

Generally, terms used in this Declaration, the By-Laws, 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 By-Laws, and the Articles of Incorporation shall be defined as follows:

- (a) Act means the Georgia Condominium Act, O.C.G.A. §44-3-70, et seq. (Michie 1982), as may be amended.
- (b) Additional Property means the additional property which may be added to the Condominium in accordance with the provisions of Paragraph 25 hereof and the Act. A legal description by metes and bounds of the Additional Property is described on Exhibit "B" attached hereto and incorporated herein by this reference.
- (c) Architectural Control Committee or ACC means the committee established to exercise the architectural review powers set forth in Paragraph 13 hereof.
- (d) Area of Common Responsibility means the Common Elements, together with those areas, if any, which by the terms of this Declaration or by agreement with any other Person become the Association's responsibility. The office of any property manager employed by or contracting with the Association, if located on the Condominium, or any public rights-of-way within or adjacent to the Condominium, may be part of the Area of Common Responsibility.
- (e) Articles or Articles of Incorporation mean the Articles of Incorporation of Hembree Creek Condominium Association, Inc., which have been filed with the Secretary of State of the State of Georgia.
- (f) Association means Hembree Creek Condominium Association, Inc., a Georgia nonprofit corporation, its successors or assigns.
- (g) Board or Board of Directors means the elected body responsible for management and operation of the Association.
- (h) Bylaws mean the Bylaws of Hembree Creek Condominium Association, Inc., attached hereto as Exhibit "C" and incorporated herein by this reference.
- (i) Common Elements mean those portions of the property subject to this Declaration which are not included within the boundaries of a Unit, as more particularly described herein.

(j) Common Expenses 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 and Area of Common Responsibility.

(k) Community-Wide Standard means the standard of conduct, maintenance, or other activity generally prevailing within the Condominium. Such standard may be more specifically determined by the Board and the ACC.

(l) Condominium means all that property described in Exhibit "A," attached hereto and incorporated herein by this reference, submitted to the provisions of the Act by this Declaration, as well as those portions of the Additional Property which may be submitted to the provisions of the Act by amendment of the Declaration.

(m) Condominium Instruments mean this Declaration and all exhibits hereto, including the Bylaws and the plats and plans, all as may be supplemented or amended.

(n) Declarant means Hembree Creek Associates, L.L.C., a Georgia limited liability company or any successor or successor-in-title thereof who comes to stand in the same relation to the Condominium as did its predecessor, provided such successor or successor-in-title is designated in writing by its predecessor as a successor to the rights of such predecessor hereunder.

(o) Effective Date means the date that this Declaration is recorded in the Fulton County, Georgia land records.

(p) Eligible Mortgage Holder means the holder of a first mortgage secured by a Unit who has requested notice of certain items as set forth herein.

(q) Limited Common Elements mean a portion of the Common Elements reserved for the exclusive use of those entitled to occupy one (1) or more, but less than all, Units, as more particularly set forth herein.

(r) Majority means those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

(s) Mortgage means 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.

(t) Mortgagee or Mortgage Holder means the holder of any Mortgage.

(u) Occupant means any Person occupying all or any portion of a Unit for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

(v) Owner means the record title holder of a Unit, but shall not include a Mortgage Holder.

(w) Person means any individual, corporation, firm, association, partnership, trust, or other legal entity.

(x) Unit means that portion of the Condominium intended for individual ownership and use as more particularly described herein and shall include the undivided ownership in the Common Elements assigned to the Unit hereunder.

3. LOCATION, PROPERTY DESCRIPTION, PLATS AND PLANS.

The Condominium subject to this Declaration and the Act is located in Land Lot 549, of the 1st District, 2nd Section of Fulton County, Georgia, being more particularly described in Exhibit "A" hereto. A plat of survey relating to the Condominium has been filed in Condominium Plat Book 10, Page 118, of the Fulton County, Georgia records. Floor plans relating to the Condominium have been filed in Condominium Floor Plan Drawer Number 2, Folder Number 324, Fulton County, Georgia records. The plat of survey and 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 Units owned by Declarant (other than changes to the location of Unit boundaries unless expressly permitted herein) including, without limitation, addition and realignment of parking spaces, renovation and installation of changes to utility systems and facilities, rearrangement and installation of security and refuse facilities, work relating to building exteriors, and extension of the drives and utility lines and pipes located on the Condominium.

4. UNITS AND BOUNDARIES.

The Condominium is divided into ten (10) separate Units, the Limited Common Elements and the Common Elements. In the event all of the Additional Property is submitted to the provisions of the Act by amendment of this Declaration, the Condominium will consist of seven-seven (77) separate Units, the Limited Common Elements and the Common Elements. Each Unit consists of a dwelling and has an equal 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 plats of survey and the 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 of the interior surfaces of the wood or other framing of the exterior wall of the Unit. With respect to common walls between Units, the perimetrical or vertical boundary of the Units served thereby shall be the centerline of such wall. The vertical boundaries include the wallboard on the Unit side of the walls, and they are extended to their intersections with each other and the upper and lower horizontal boundaries of the Unit. Exterior doors and exterior glass surfaces, including but not limited to, windows and sliding glass doors, serving the Unit shall be included within the boundaries of the Unit. Heating and air conditioning systems exclusively serving a single Unit as well as any water heater exclusively serving a single unit (including any part of any such system or water heater located outside the boundaries of the Unit) and appliances and plumbing fixtures within a Unit shall be construed to be a part of the Unit.

(b) Horizontal Boundaries. The upper horizontal boundary of each Unit located in the Condominium is the plane formed by the uppermost, unexposed surface of the wallboard or other material comprising a part of the ceiling enclosing the uppermost story of the Unit, so that such wallboard shall constitute a portion of the Unit. The lower horizontal boundary of each Unit located in the Condominium is the plane formed by the upper surface of the concrete subflooring on which the Unit is constructed, with the flooring constituting a 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 which serve only that Unit shall be deemed to be a part of that Unit, while any portions thereof which serve more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements.

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

The ownership of each Unit shall include, and there 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 certain utilities, landscaping, fencing, paving, walls, lobbies, hallways, entry features, and recreational facilities. The common elements also consist of certain parking areas, which are subject to certain easements, regulations and restrictions set forth in this Declaration.

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 shall be equal; initially, each Unit will have an undivided one-tenth (1/10) interest in and to the Common Elements. 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 26 hereof, 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 nor 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) Limited Common Elements located on the Condominium and the Unit(s) to which they are assigned are: (i) the patio, terrace, balcony, deck, porch and steps, together with any enclosure thereof, appurtenant to and serving any Unit is assigned as a Limited Common Element to the Unit having direct access thereto; (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; and (iii) any gas or electric meter which serves only one Unit is assigned as a Limited Common Element to the Unit so served.

(b) The Association's Board, without need for a membership vote, is hereby authorized to assign and to reassign Limited Common Elements, 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. If parking spaces are not assigned as Limited Common Elements at the time of recording of this Declaration, then such items may be assigned as Limited Common Elements hereunder. A Common Element not previously assigned as Limited Common Element may be so assigned by the Board, without the need for a vote of the Association, upon written application to the Association by the Unit Owner or Owners for whose exclusive use such Common Element is requested. Upon such application and approval, the Association shall prepare and execute an amendment to the Declaration assigning the Common Element as a Limited Common Element, which amendment shall be executed by the Owner or Owners making such application. Such amendment shall become effective as provided in Section 44-3-82 of the Act.

(c) Parking spaces in the exterior uncovered parking lot which is part of the Condominium may be assigned as Limited Common Elements by Declarant without approval of the members of the Association by recording an amendment hereto executed by Declarant designating the parking spaces being assigned as Limited Common Elements and the Units to which such spaces are assigned. Declarant and the Board shall be authorized to determine a rental charge for parking spaces, whether or not assigned as Limited Common Elements and whether or not located in the exterior parking lot, and to assess such charges against Owners or Occupants for use of such spaces. Assigned spaces may not be transferred except with approval of the Board and Declarant, while Declarant owns at least one Unit. Declarant and the Board may designate certain parking spaces as guest or visitor parking if such spaces have not been assigned as Limited Common Elements. Notwithstanding anything to the contrary herein, certain parking spaces in the exterior parking lot shall be designated by Declarant as permanently reserved for use by the owners, operators, visitors and customers of the commercial or retail units in the Tower which are not submitted to the Condominium or this Declaration.

7. ASSOCIATION MEMBERSHIP AND ALLOCATION OF VOTES.

All Unit 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 Hembree Creek Condominium Association, Inc., and, except as otherwise provided herein or in the By-Laws, shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Declaration and in accordance with the By-Laws. Subject to the provisions of the Condominium Instruments, each Owner shall be entitled to one (1) equally weighted vote for each Unit in which he or she holds the interest required for membership.

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 equally against all the Units.

(b) The Board shall have the power to assess specially 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 to do so shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.

(i) Except for expenses incurred for maintenance and repair of items which are the Association's maintenance responsibility under the Condominium Instruments, any Common Expenses benefiting less than all of the Units or significantly disproportionately benefiting all Units may be specially assessed equitably among all of the Units which are benefited according to the benefit received.

(ii) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units or by the Occupant(s), licensees or invitees of any such Unit(s) may be specially assessed against such Unit(s).

For purposes of this subparagraph (b), nonuse shall constitute a benefit to less than all Units or a significant disproportionate benefit among all Units only when such nonuse results in an identifiable, calculable reduction in cost to the Association.

(c) The Condominium is currently served by a common water meter. The Board shall have the authority to install submeters and assess individual Unit water usage charges against individual Units and/or install separate utility meters for the Units.

9. ASSOCIATION RIGHTS AND RESTRICTIONS.

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

(a) to enter any portion of the Condominium for maintenance, emergency or safety purposes, or otherwise to discharge its responsibilities, in accordance with Section 44-3-105 of the Act, which right may be exercised by the Association's Board, officers, agents, employees or managers. Except in an emergency situation, entry into Units shall be only during reasonable hours and after reasonable notice to the Unit Owner or Occupant;

(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 By-Laws 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, as amended;

(d) to grant permits, licenses, utility easements, and other easements;

(e) to control, manage, operate, maintain, improve and replace all portions of the Area of Common Responsibility;

(f) to deal with the Condominium in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of the Act and this Declaration;

(g) to close permanently or temporarily any portion of the Common Elements (excluding the Limited Common Elements) with thirty (30) days prior notice to all Owners, except that, in emergency situations requiring a temporary closing, prior notice shall not be required so long as notice is given within three (3) days after the closing explaining the reason for the

closing. Notwithstanding the above, the Owners may re-open closed Common Elements by a majority vote of the total Association vote, cast at a duly called special or annual meeting; and

- (h) to acquire, hold, and dispose of tangible and intangible personal property and real property.

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 as may be more specifically authorized by the Board.

(b) Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Unit, including Declarant for each Unit owned by Declarant, 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 established and collected as herein provided; and (iii) specific assessments against any particular Unit which are established pursuant hereto, including but not limited to reasonable fines imposed hereunder.

All such assessments, together with charges, interest, costs, and reasonable attorney's 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; 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, the Association's failure to perform its obligations required hereunder, or 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.

(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.

(i) If any monthly 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 (\$10.00) dollars or ten (10%) percent 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 (10%) percent or such higher rate as may be permitted by the Act shall accrue from the due date.

(ii) If part payment of assessments and related charges is made, the amount received may be applied first to costs and attorney's fees, 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 more than fifteen (15) days from the date due, then the Board may accelerate and declare immediately due all of that Owner's or Unit's unpaid installments of the annual assessment and of any special assessment not less than ten (10) days after the date of written notice to the Owner. Upon acceleration, that Owner shall 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 than 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 and suspend the Owner's 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 (provided, 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). 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, in addition to all other rights provided in the Act and herein, the Association shall have the right upon ten (10) days written notice, and in compliance with any requirements set forth in the Act, to suspend any utility services, the cost of which are an Association Common Expense, including, but not limited to, water, electricity, heat, air conditioning and cable television, to that Unit until such time as the delinquent assessments and all costs permitted under this Paragraph, including reasonable attorney's fees, are paid in full. Any costs incurred by the Association in discontinuing and/or reconnecting any utility service, including reasonable attorney's fees, shall be an assessment against the Unit.

Notwithstanding the above, the Board only may suspend water, electricity, heat or air conditioning service paid for as a Common Expense after a final judgment or judgments in excess of a total of \$750.00, or such other amount as required by the Act, are obtained in favor of the Association from a court of competent jurisdiction, the Association provides the notice required to be provided by the institutional provider of such service prior to suspension of such service, and the Association complies with any other requirements of O.C.G.A. § 44-3-76. The utility services shall not be required to be restored until all judgments are paid in full, at which time the Association shall direct the utility provider to restore the service.

(d) Computation of Operating Budget and Assessment. At least thirty (30) days prior to the beginning of the Association's fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Condominium during the coming year. The Board shall cause the budget and notice of the assessments to be levied against each Unit for the following year to be delivered to each member at least twenty-one (21) days prior to the Association's annual meeting. The budget and the assessment shall become effective unless disapproved at a duly called and constituted annual Association meeting by a vote of a majority of the total Association membership; 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 at this meeting.

If the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then, until a budget is 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 Association meeting. The proposed budget and assessment shall be delivered to the members at least thirty (30) 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.

(e) Special Assessments. In addition to the annual assessment provided for in subparagraph (b) above, the Board may at any time levy a special assessment against all Owners, notice of which shall be sent to all Owners. Any special assessment which would cause the average total of special assessments levied in one fiscal year to exceed two hundred (\$200.00) dollars per Unit shall be approved by a Majority of the Owners prior to becoming effective (except as provided in Paragraph 8(b) regarding the power to assess specially pursuant to Section 44-3-80(b) of the Act and Paragraph 12(b) herein, regarding repair or reconstruction of casualty damage to or destruction of all or part of the Condominium).

(f) Capital Budget and Contribution. The Board may prepare an annual capital budget or evaluation which takes into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

(g) 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) days of receipt of the request; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars or such higher amount 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.

(h) 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 thereafter shall, at the Board's option, either be distributed to the Owners or credited to the Owners' next chargeable assessment in proportion to the liability for Common Expenses attributable to each Unit, or added to the Association's reserve account.

(i) Working Capital Fund. Each initial purchaser of a Unit shall pay to the Association (or until such time as Declarant's control ends pursuant to Paragraph 26(a) below, to Declarant) a non-refundable working capital contribution equivalent to two (2) months of estimated monthly assessments for Common Expenses for such purchaser's Unit. This initial capital payment shall not be deemed to constitute advance payment of regular assessments. Declarant shall deliver to the Association not later than the expiration of the period of Declarant's control pursuant to Paragraph 26(a) all such payments received by Declarant. The Association (or Declarant to the extent applicable) shall maintain these funds in a segregated fund. Such funds shall be used to met unforeseen expenditures or to purchase any additional equipment or services and for such other purposes as the Association may determine. Declarant shall not utilize these working capital funds to defray any of its expense (other than expense associated with the organization and operation of the Association), reserve contributions or construction costs or to make up any budget deficits while Declarant is in control of the Association pursuant to Paragraph 26(a). However, when previously unsold Units are sold, Declarant may reimburse itself for funds it paid the Association for an unsold Unit's share of the working capital fund by using funds collected at the closing of such previously unsold Unit.

11. INSURANCE.

The Association 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. To the extent reasonably available at reasonable cost, the Association's insurance policy shall cover any of the following types of property contained within a Unit, regardless of ownership: (a) fixtures, improvements and alterations that are a part of the building or structure; and (b) appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping. If such insurance is not reasonably available, the Association's insurance policy may exclude improvements and betterments made by the Unit Owner and may exclude the finished surfaces of perimeter and partition walls, floors, and ceilings within the Units (i.e., paint, wallpaper, paneling, other wall covering, tile, carpet and any floor covering).

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 Unit 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 Association's insurance shall not include the Unit Owners' personal property unless the Association advises the Unit Owners of such coverage in writing.

The Board 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. At least every two (2) years, the Board shall 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, which may be performed by the Board requesting the Association's insurance agent to so verify.

(a) The Board shall utilize reasonable efforts to secure a blanket hazard insurance policy providing "all risk" coverage in an amount equal to full replacement cost, before application of deductibles, of all improvements located on the Condominium property. If "all risk" 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 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 Unit Owners' policies from its operation;

(iii) until the expiration of thirty (30) 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 Unit Owners, the Board, 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 thirty (30) days prior notice in writing to the Board and all Mortgagees of Units;

(v) an agreed value endorsement and an inflation guard endorsement; and

(vi) the deductible amount per occurrence for coverage required by the Act shall not exceed one thousand (\$1,000.00) dollars.

(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 Board; 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 Unit Owners or their Mortgagees. Each Unit Owner shall notify the Board 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 policy with the Board within thirty (30) days after its purchase. Such Owner shall also promptly notify the Board in writing if such policy is canceled.

(e) In addition to the insurance required hereinabove, the Board shall obtain as a Common Expense:

(i) worker's 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 consonant with the best business judgment of the Board of Directors, but in no event less than three (3) month's 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 members of the Board must sign any checks written on the reserve account; and

(iv) such other insurance as the Board may determine necessary.

(f) Insurance carried by the Association as a Common Expense shall not be required to include any part of a Unit which is not depicted on the original plats and plans, 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 Unit 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 Board request, the Owner shall furnish a copy of such insurance policy to the Association. If any Unit Owner fails to obtain insurance as required herein, the Association may purchase such insurance on behalf of the Owner and assess the cost thereof to the Owner.

(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 Unit or a Unit and the 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 or otherwise as the Board determines equitable. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Unit Owner shall be responsible for paying any deductible pertaining to his or her Unit. If any Owner fails to pay the deductible when required hereunder, then the Association may pay the deductible and assess the cost to the Owner pursuant to Paragraph 8 hereof; provided, however, where the deductible is for insurance required under the Act, no Owner shall be assigned more than one thousand (\$1,000.00) dollars, or such higher amount as authorized by the Act, as the cost of the deductible for any one occurrence.

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 (80%) percent of the Unit Owners, including the Owner or Owners of any damaged Unit or Units, vote not to proceed with the reconstruction and repair of the structure, 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 institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Unit Owner with respect to the distribution of proceeds to any such Unit.

(a) Cost Estimates. Immediately 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 which 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 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 estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, 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 Paragraph 10(d). If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Condominium was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are 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 which 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 Unit 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 Unit Owners on account of such casualty shall constitute a construction fund which 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 buildings as are designated by the Board of Directors.

13. ARCHITECTURAL CONTROLS

(a) Architectural Standards. Except as provided herein, no Owner, Occupant, or any other person may make any encroachment onto the Common Elements or Limited Common Elements, or make any exterior change, alteration, construction or modification (including painting and landscaping), nor erect, place or post any object, sign, antenna, clothesline, playground equipment, light, fountain, flag or other thing on the exterior 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. 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, and the location in relation to surrounding structures and topography. *See Rules & Regulations for details.*

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 Board approval (including, but not limited to installation of washers and dryers). No Owner or Occupant shall make any interior modifications to any structural or load bearing portions of a Unit. Interior modifications may only be made in accordance with any construction guidelines as may be adopted by the Board. All building code requirements must be complied with and necessary permits and approvals secured for any modifications.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. The ACC or its designated representative 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 which is not in conformance with approved plans. The Board or the ACC may publish written architectural standards for exterior and Common Element alterations or additions, and any request in substantial compliance therewith shall be approved.

In the event that the ACC or its designated representative fails to approve or to disapprove such application within forty-five (45) days after the application and all information as the ACC may reasonably require have been submitted, its approval will not be required and this subparagraph (a) will be deemed complied with.

(b) Architectural Control Committee. The ACC shall constitute a standing committee of the Association and shall consist of the Board unless the Board delegates to other Owners the authority to serve on the ACC. At all times, however, the Chairperson of the ACC shall be a Board member.

(c) Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself 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.

(d) Limitation of Liability. Review and approval of any application hereunder may be made on any basis, including solely the basis of aesthetic considerations only, and neither the Board nor the ACC shall bear any responsibility for ensuring the design quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Association, the Board, the ACC, or member thereof shall be liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Unit.

(e) No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board and ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board or ACC of any proposals, plans and specifications or drawings hereunder 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.

(f) 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 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 attorney's fees, may be assessed against the benefited Unit and collected as an assessment pursuant to this Declaration.

In addition to the foregoing, the Board 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.

If any Owner or Occupant makes any exterior change, alteration, modification, 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, modification, or construction 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, modification, or construction.

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 may adopt rules and regulations in accordance with the terms hereof and as specified in the By-Laws.

(a) Residential Use of Units. Except for activities of Declarant in Units owned by Declarant, 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, except that the Owner or Occupant residing in a Unit may conduct such ancillary business activities within the Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Unit; (b) the business activity does not involve frequent visitation of the Unit by employees, clients, customers, suppliers or other business invitees; (c) the business activity conforms to all zoning requirements for the Condominium; (d) the business

activity does not increase traffic in the Condominium (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services); (e) 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; (f) 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 may be determined in the Board's sole discretion; and (g) 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 or Declarant shall not be considered a trade or business hereunder.

(b) Subdivision and Combination of Units. No Unit may be subdivided into a smaller Unit except in strict conformance with the Act and, as long as Declarant owns an Unit, the approval of Declarant. So long as Declarant owns an Unit, boundaries between adjoining Units shall remain as established in accordance with the Plans and shall not be relocated without approval of Declarant. 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 load bearing wall or column is materially weakened or removed 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. The alterations permitted by this subparagraph shall not be deemed an alteration or relocation of boundaries between adjoining Units.

(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 on any portion of the Condominium, other than by Declarant, at any time, either temporarily or permanently, without the written approval of the Board.

(d) Use of Common Elements. 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 prior written Board consent, except for Declarant activities while Declarant owns a Unit or as otherwise specifically provided herein.

(e) Use of Limited Common Elements. Use of the Limited Common Elements are 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 as provided in subparagraph (d) of this Paragraph shall also apply to the Limited Common Elements.

(f) Prohibition of Damage, Nuisance and Noise. Without prior written Board consent, 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.

Noxious, destructive or offensive activity shall not be carried on upon 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 Board's sole opinion, a nuisance. 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 Board's reasonable opinion, 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 the 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.

(g) Firearms and Fireworks. The display or discharge of firearms or fireworks on the Common Elements is prohibited, except for use by law enforcement officers and display for the limited purpose of transporting the firearms across the Common Elements to or from an Owner's Unit. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types and size. The term "fireworks" shall include those items as listed in O.C.G.A. Section 25-10-1, as amended.

(h) Pets. No Owner or Occupant may keep any pets other than generally recognized household pets on any portion of the Condominium, and no Owner or Occupant may keep more than two (2) pets per Unit or any pet weighing more than twenty (20) pounds. Any pet which endangers the health of any Owner or Occupant of any Unit or which creates a nuisance or unreasonable disturbance, as may be determined in the Board's sole discretion, must be permanently removed from the Condominium upon seven (7) days' written notice by the Board. If the Owner or Occupant fails to do so, the Board may remove the pet. Any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any member of the community may be removed by the Board without prior notice to the pet's owner.

(i) Parking. No Owner or Occupant may keep or bring onto the Condominium more than a reasonable number of vehicles per Unit at any time without prior written Board consent. Vehicles must be parked in designated parking spaces only. Certain spaces may be assigned as Limited Common Elements exclusively serving a particular Unit, or may be leased to a particular Occupant by the Association and not assigned as Limited Common Elements. Such assigned spaces may only be used by the Owners or Occupants to whom the spaces are assigned, and their guests and families. Although not expressly regulated at this time, the Board may adopt reasonable rules limiting the number of vehicles which may be parked on the Condominium. *Board adopted 2 vehicles per unit limit.*

Disabled and stored vehicles are prohibited from being parked on the Condominium. For purposes of this subparagraph, 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 unmoved on the Condominium for twenty-one (21) consecutive days or longer without prior written Board permission.

Boats, boat and other trailers, vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors are also prohibited from being parked on the Condominium, except in areas, if any, designated by the Board as parking areas for particular types of vehicles. Notwithstanding the above, commercial vehicles and vehicles with commercial writings on their exterior shall be allowed temporarily on the Common Elements during normal business hours for the purpose of serving any Unit or the Common Elements; provided, that no such vehicle shall be authorized to remain on the Common Elements overnight or for any purpose except serving a Unit or the Common Element without written Board approval.

If any vehicle is parked on any portion of the Condominium in violation hereof or of the Association's rules, the Board 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. The notice shall include the name and telephone number of the person or entity which will do the towing 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 vehicle may be towed 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, is obstructing the flow of traffic, is parked on a grassy area, is parked in a space which has been assigned as exclusively serving another Unit, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance herewith, 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. The Association's right to tow is in addition to, and not in limitation of all other rights of the

Association, including the right to assess fines. The Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

(j) Abandoned Personal Property. Personal property, other than an auto as provided for above, is prohibited from being stored, 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 personal property in a location which the Board may determine. The notice shall include the name and telephone number of the person or entity which 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 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.

(k) 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 (55°) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two (32°) degrees 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 may fine any Owner or Occupant and/or may cause the water service to the violator's Unit to be discontinued for violation hereof, in addition to any other remedies of the Association.

(l) Signs. Except 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 or billboards of any kind shall be erected, placed, or permitted to remain on the Condominium without prior written Board consent, except that one (1) professionally lettered "For Rent" or "For Sale" sign not to exceed two (2) feet by two (2) feet in size may be displayed from within a Unit being offered for lease or for sale. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association.

(m) 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 as provided herein. Rubbish, trash, and garbage shall be disposed of in sealed bags and either placed in proper receptacles designated by the Board for collection or removed from the Condominium.

(n) 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. Appropriate outdoor items, such as patio furniture, may be kept on the patio or balcony serving the Unit only.

(o) 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 Property as Declarant may deem necessary, such facilities and activities as in the Declarant's sole opinion 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 Property 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.

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15. LEASING.

** see separate amendment prohibiting leasing.*

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and By-Laws, in order to enforce the provisions of this Paragraph.

(a) Definition. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Roommates of an Owner Occupant shall not be considered leasing hereunder.

(b) Leasing Provisions. Leasing of Units shall be governed by the following provisions:

(i) General. Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. All leases must be for an initial term of not less than six (6) months, except with Board approval. The Board may permit short-term leasing of Units for specific events, which consent will not be unreasonably withheld, such in cases where denial would cause undue hardship to the Unit owner, and may establish such rules and administrative fees therefor as it determines are appropriate. Within seven (7) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Unit. The Unit Owner must provide the lessee with copies of the Declaration, By-Laws, and the rules and regulations.

(ii) Compliance With Declaration, By-Laws, and Rules and Regulations, and Liability for Assessments. Each Owner and each lessee, by occupancy of a Unit, covenants and agrees that any lease for a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Unit:

(A) Compliance With Declaration, By-Laws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, By-Laws, and Association rules and shall control the conduct of all other Occupants and guests to ensure compliance with the foregoing. The Owner shall cause all Occupants of his or her Unit to comply with the Declaration, By-Laws and rules and regulations, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any such violation. Unpaid fines shall constitute a lien against the Unit.

Any such violation by the lessee, any Occupant, or any guest of the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Unit.

(B) Liability for Assessments. When a Unit Owner who is leasing his or her Unit fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the lease and occupancy period. However, lessee need not make such payments in excess of, or prior to the due dates for regular monthly rental payments. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. This provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(c) Inapplicability to Declarant and Holders of First Mortgages. This Paragraph 15 shall not apply to any leasing transaction entered into by Declarant or by the holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

16. SALE OF UNITS.

Within ten (10) days after receiving title to a Unit, the purchaser of the Unit shall give the Board written notice of his or her ownership of the Unit.

17. MAINTENANCE RESPONSIBILITY.

(a) By the Owner. Except as expressly provided below, each Owner shall have the obligation to maintain, keep in good repair and replace all portions of his or her Unit and all Limited Common Elements assigned to his or her Unit. This maintenance responsibility shall include, but not be limited to the following: all glass surfaces of windows, window frames, casings and locks (including caulking of windows); all doors, any balcony, deck, terrace, patio, porch or steps assigned to a Unit as a Limited Common Element, including any enclosure thereof; doorways, door frames, and hardware that are part of the entry system of the Unit; all portions of the heating and air conditioning system, including the air conditioning compressor, which serve only the Unit and the fan coil, including periodic preventive or maintenance measures as may be customary or as requested by the Board; all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether located within or without a Unit's boundaries (including all gas, electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits, or other apparatus serving only the Unit); the appliance and fixtures within the Unit; and the walls, floors, ceilings and roof supports of the Unit (excluding the shingles or other covering or surface material).

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 and any parking space(s) assigned to or reserved for 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 family, tenants 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, keep in good repair, replace, and, in the Board's discretion, improve, as a Common Expense the "Area of Common Responsibility," which includes the following:

(i) all Common Elements (except for Limited Common Elements);

(ii) periodic painting and/or staining of exterior surfaces of doors, door frames and window frames, as determined appropriate by the Board;

(iii) maintenance and repair of exterior visible brick, wood, or siding on the buildings housing the Units; and

(iv) roof surfaces (limited to roof shingles or other covering and surface materials).

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 or to any Limited Common Element.

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Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or Occupant which 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 the maintenance or repair.

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 which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment which 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 family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or family 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 which 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.

The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. In performing its responsibilities hereunder, the Association 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.

(c) Failure to Maintain. If the Board 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.

Unless the Board determines that an emergency exists, the Owner shall have ten (10) days within which to complete 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 family, 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, upon resolution, shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Condominium which are the maintenance responsibility of the Unit Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in 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 all Owners to install smoke detectors; 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 (\$300.00) dollars per Unit in any twelve (12) month period.

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(ii) In addition to, and not in limitation of, any other rights the Association may have, if any Unit Owner does not comply with any requirement made by the Board hereunder, the Association, upon fifteen (15) days' written notice, may perform such required act or work at the Unit 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.

18. PARTY WALLS.

(a) General Rules of Law to Apply. Each wall built as a part of the original construction of the Units which shall serve and separate any two (2) adjoining Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Paragraph, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

(c) Damage and Destruction. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has benefited by the wall may restore it, and the other Owner or Owners thereafter who are benefited by the wall shall contribute to the cost of restoration thereof in equal proportions, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Paragraph shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Paragraph, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board of Directors, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties. Compliance with this subparagraph shall be a condition precedent to any right of legal action that either party may have against the other in a dispute arising under the provisions of this Paragraph.

19. MORTGAGEE'S RIGHTS.

(a) Unless at least two-thirds (2/3) of the first Mortgagees or Unit Owners give their consent, the Association shall not:

(i) by act or omission seek to abandon or terminate the Condominium;

(ii) except for expansion of the Condominium by Declarant as provided herein, change the pro rata interest or obligations of any individual Unit for the purpose of (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (2) determining the pro rata share of ownership of each Unit in the Common Elements;

(iii) partition or subdivide any Unit;

(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.

This provision shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Unit 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 or other purchaser of a Unit obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which 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, all charges for the month in which title is passed.

(c) Upon written request to the Association, identifying the name and address of the holder and the Unit number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:

(i) 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;

(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 which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Unit Owner of any other obligation under the Condominium Instruments which 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 which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

(d) 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.

(e) Notwithstanding anything to the contrary herein contained, the provisions of Paragraphs 15 and 16 governing sales and leases 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; (ii) take a deed or assignment in lieu of foreclosure; or (iii) sell, lease, or otherwise dispose of a Unit acquired by the Mortgagee.

20. GENERAL PROVISIONS.

(a) Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Condominium; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not an insurer or guarantor of safety or security at the Condominium and shall have no duty to provide security at the Condominium. 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 Unit Owner. Neither Declarant nor the Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken.

(b) Dispute Resolution. Prior to filing a lawsuit against the Association, the Board, or any officer, director, or property manager of the Association, a Unit Owner or Occupant must request and attend a hearing with the Board. Any such request shall be in writing and shall be personally delivered to any Board member or the Association's property manager. The Owner or Occupant shall, in such request and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the

person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the request.

21. 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, that any proceeds received for 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 O.C.G.A. §44-3-97(a), as amended, or be deposited into the Association's operating account or reserve account to be applied to Common Expenses. Each institutional holder of a first Mortgage shall be entitled to written notice of any such condemnation proceedings, and nothing in the Condominium Instruments shall be construed to give a priority to any Unit Owner in the distribution of proceeds to such Unit.

22. EASEMENTS.

(a) Use and Enjoyment. Each Unit Owner and Occupant shall have a right and 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 easement shall be appurtenant to and shall pass with the title to such Unit, subject to the rights of the Unit Owners to the exclusive use of the Limited Common Elements assigned to their respective Units and 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.

(b) Support. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

(c) Encroachments. The Units and Common Elements shall be subject to easements of encroachment as set forth in the Act.

(d) Utilities. To the extent that 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 an easement for the use, maintenance, repair and replacement of such utility line, pipe, wire or conduit, such easement to be in favor of the Unit, Units, or Common Elements served by the same and the Association.

(e) Declarant Easements. So long as Declarant owns any Unit primarily for the purpose of sale, Declarant and its duly authorized contractors, representatives, agents, and employees shall have: (1) an easement for the maintenance of signs, a sales office, a business office, promotional facilities and model Units on 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 or sale of the Unit, and (2) a transferable easement on, over, through, under and across the Common Elements for the purpose of making improvements on the Condominium or any portion thereof, for the purpose of installing, replacing, repairing and maintaining all utilities serving the Condominium, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

(f) Community Bulletin Board. As part of the Common Elements maintained by the Association, Declarant and/or the Board shall have the right to erect on the Condominium a bulletin board primarily for the use of Unit Owners in advertising their Units for sale. For so long as the Association desires to maintain this bulletin board, each Unit Owner and his licensed real estate broker and agent may use the Condominium for access, ingress and egress to and from this bulletin board; provided, however, the use of the bulletin board shall be subject to such reasonable nondiscriminatory rules and regulations as may be adopted or promulgated by the Board regulating the size and duration of such advertisements. Declarant or Board may terminate use of this bulletin board entirely at any time, and no property rights of any kind are created hereby.

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23. AMENDMENTS.

(a) Expansion Amendments. As more particularly provided in Paragraph 25, Declarant has the right to amend this Declaration at any time, and from time to time, within the time period specified in Paragraph 25 hereof, for the purpose of adding all or any portion of the Additional Property to the Condominium. All such amendments shall conform to the requirements set forth in Paragraph 25 hereof and shall be duly executed by and on behalf of those persons set forth in Paragraph 25 hereof. No amendment to this Declaration made pursuant to the provisions of Paragraph 25 hereof shall require the joinder, approval or consent of any person other than those persons specified in Paragraph 25 hereof.

(b) Other Amendments. Except as otherwise provided herein or required by the Act, 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 sixty-seven percent (67%) of the total vote thereof. As long as Declarant has an unexpired option to add any portion of the Additional Property to the Condominium pursuant to the provisions of Paragraph 25 hereof, or has the right to appoint and remove the officers and directors of the Association pursuant to the provisions of Paragraph 26 hereof, any amendment to this Declaration or the Bylaws shall require the written consent of Declarant. Notice of a meeting, if any, 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 Fulton County, Georgia land records.

In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one (51%) percent 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.

Notwithstanding the foregoing, Declarant or the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with any applicable state, city or federal law, and/or to bring the Condominium into compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA").

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.

24. SEVERABILITY.

Invalidation of any one of these covenants or restrictions 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.

25. EXPANSION OPTION.

(a) Declarant expressly reserves the option and right, but not the obligation, to expand the Condominium, and subject to this Declaration and the Act, to submit to the Condominium all or any portion of the Additional Property, including any improvements thereon. Except as contained in this Paragraph 25, there is no limitations upon this option to expand.

(b) This option to expand shall expire seven (7) years from the date of recording of this Declaration, unless all of the Additional Property shall have been added to the Condominium before that time; provided that the time may be extended by the affirmative vote or written consent of sixty-seven percent (67%) of the total vote of the Association, excluding any votes held by Declarant at any time during the year preceding the time the option would otherwise expire.

(c) The Condominium shall be developed in phases and the boundaries of the property to be included in each phase following the initial phase shall be determined by amendments to this Declaration made by Declarant as the Condominium is expanded and phases are determined. The Additional Property within any phase made be added as a whole at

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any one time or in one or more portions at different times, or it may never be added, and there are no limitations upon the order of addition or boundaries thereof. The portions of the Additional Property submitted to the Condominium need not be contiguous and the exercise of the option as to any portion of the Additional Property shall not bar the further exercise of the option as to any other portions of the Additional Property.

(d) There are no limitations on the locations or dimensions of improvements to be located on the Additional Property. No assurances are made as to what, if any, further improvements will be made by Declarant on any portion of the Additional Property.

(e) The maximum number of Units that may be created in the Condominium is seventy-seven (77), and the maximum number of Units that may be created on the Additional Property is sixty-seven (67).

(f) Any structures and improvements placed, constructed, replaced or reconstructed on the Additional Property, as added to the Condominium, will be compatible with and the same or similar to the existing Units in the Condominium as to quality of construction and architectural style. Any structures and improvements shall be substantially completed prior to being added to the Condominium. No assurances are made with respect to materials to be used in improvements placed on the Additional Property. Minor variations in the architectural style, size and floor plans of the Units and/or the buildings within the Additional Property submitted to the Condominium shall not render any Units with the Additional Property not to be substantially identical to the existing Units in the Condominium.

(g) The Additional Property, when and if added to the Condominium, shall be subject to the use restrictions contained in this Declaration or subsequently promulgated in accordance herewith.

(h) Declarant shall have the unlimited right to assign some of the Additional Property as Limited Common Elements.

(i) If the option to expand the Condominium is exercised, the undivided interest in the Common Elements, the liability for Common Expenses and votes in the Association shall all be reallocated so that the interest, liability and vote of each Unit is equal to that of every other Unit in the Condominium.

(j) This option shall be exercisable by Declarant and the consent of Owners of Units shall not be required; however, the consent of all other owners and mortgages of the portion of the Additional Property being added to the Condominium shall be obtained. Declarant shall have the unilateral right to reallocate percentages of undivided interest in the Common Elements, liability for payment of Common Expenses and allocation of votes in the Association, all to be done in accordance with the limitations above described. Declarant shall exercise this option by adoption, execution and recordation of an amendment to this Declaration and by recording such plats, certifications and plans as required by the Act.

25. DECLARANT RIGHTS.

(a) Appointment and Removal of Directors and Officers. Notwithstanding anything to the contrary herein, or in the Articles of Incorporation or By-Laws which may be construed to the contrary, Declarant shall be authorized to appoint and remove any member or members of the Board of Directors and may appoint and remove any officer or officers of the Association. Declarant's authority to so appoint and remove members of the Board of Directors and officers of the Association shall expire upon the first of the following to occur: (i) the expiration of five (5) years after the date upon which this Declaration shall be recorded with the Clerk of the Superior Court of Fulton County, Georgia; (ii) unless there is an unexpired option to expand, the date as of which seventy-five percent (75%) of the Units shall have been conveyed by Declarant to Owners other than a person or persons constituting Declarant; or (iii) the date on which Declarant voluntarily relinquishes such right by executing and recording a written declaration of intent which shall become effective as specified in such declaration.

(b) Declarant's Easement. So long as Declarant owns any land or Unit subject to this Declaration primarily for the purpose of sale or lease, or has an unexpired option to expand the Condominium, Declarant and its duly authorized agents, representatives and employees have, and there is expressly reserved unto Declarant, its agents, representatives and employees, an easement over, across and to the Condominium for the construction of Units or common facilities, provision of warranty

services to Owners, provision of services to tenants, and for the maintenance of sale and/or leasing offices, signs and/or model Units on the Condominium (hereinafter referred to as the "Declarant's Easement").

(c) Sale or Lease of Units by Declarant. Notwithstanding anything herein to the contrary, until the termination of Declarant's Easement, Declarant shall have the right to sell and lease Units and to erect and maintain signs to facilitate such sales or leases as Declarant, in its sole discretion, deems appropriate and shall not be required to comply with the provisions of this Declaration regarding signs, sales of Units or leases.

(d) Recreational Easements Regarding Common Elements. Until the expiration of the expansion option under Paragraph 25 above, Declarant may cause a portion of the Common Elements to be subject to recreational and cost-sharing easements regarding use of portions of the Common Elements by owners and/or residents of portions of the Additional Property which has not been submitted to the provisions of this Declaration, provided the owners and/or residents of those portions of the Additional Property (i) comply with all rules and regulations regarding the use of such Common Elements which are applicable to all Owners, and (ii) pay the pro rata share of expenses associated with their use of those Common Elements and maintenance thereof.

27. PREPARER.

This Declaration was prepared by Daryl R. Griswold, 1085 Sheridan Park, Atlanta, Georgia 30324.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 24th day of September, 1996.

DECLARANT:

Hembree Creek Associates, L.L.C.
a Georgia limited liability company

By: Southern Realty Management, Inc.
A Georgia corporation
Its: Manager

By: C. Alvin Roberds
C. Alvin Roberds, President

Attest: Timothy Martin
Timothy Martin, Secretary

[CORPORATE SEAL]

Signed, sealed, and delivered
this 24th day of September,
1996 in the presence of:

B.J. Gray
WITNESS



Shirley Robert Miles
NOTARY PUBLIC
Notary Public, Gwinnett County, Georgia
My Commission Expires August 23, 2000

[NOTARY SEAL]



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EXHIBIT "A"

Description of Submitted Property

All that tract or parcel of land lying and being in Land Lot 549 of District 1, Section 2, Fulton County, Georgia, within the City of Roswell, and being more particularly described as follows:

To find the point of beginning, commence at a concrete monument located at the northwest corner of Land Lot 516, said corner being the common corner of Land Lots 511, 512, 515 and 516; thence go North 86 degrees 16 minutes 40 seconds East 595.10 feet along the north line of Land Lot 516 to a point; thence South 89 degrees 13 minutes 14 seconds East for a distance of 1027.12 feet along the north line of Land Lots 516 and 549 to a point; thence South 1 degree 11 minutes 08 seconds West for a distance of 822.33 feet to a point, which point is the Point of Beginning;

From said Point of Beginning, thence South 1 degree 11 minutes 08 seconds West a distance of 336.78 feet to a point; thence North 87 degrees 55 minutes 50 seconds West for a distance of 300.00 feet to a point; thence South 1 degree 11 minutes 08 seconds West for a distance of 205.00 feet to a point on the north right of way line of Hembree Road; thence North 87 degrees 55 minutes 50 seconds West for a distance of 51.75 feet along the north right of way line of Hembree Road to a point; thence North 4 degrees 17 minutes 36 seconds East for a distance of 58.00 feet along the east right of way line of Hembree Road to a point; thence North 87 degrees 55 minutes 50 seconds West for a distance of 55.43 feet along the north right of way line of Hembree Road to the centerline of Foe Killer Creek; thence North 4 degrees 17 minutes 36 seconds East for a distance of 23.11 feet along the centerline of Foe Killer Creek to a point; thence North 2 degrees 34 minutes 21 seconds East for a distance of 161.51 feet along the centerline of Foe Killer Creek to a point; thence North 9 degrees 12 minutes 57 seconds East for a distance of 38.51 feet along the centerline of Foe Killer Creek to a point; thence North 2 degrees 19 minutes 05 seconds East for a distance of 73.60 feet along the centerline of Foe Killer Creek to a point; thence North 15 degrees 24 minutes 08 seconds West for a distance of 83.96 feet along the centerline of Foe Killer Creek to a point; thence North 3 degrees 29 minutes 36 seconds West for a distance of 101.30 feet along the centerline of Foe Killer Creek to a point; thence leaving Foe Killer Creek and running South 88 degrees 48 minutes 52 seconds East for a distance of 424.22 feet to a point, which point is the Point of Beginning.

Together with and subject to covenants, easements and restrictions of record.

Said property contains 3.512 acres and is more fully shown on that certain plat of survey for Hembree Creek Condominiums, Phase I, by Construction Engineering, dated July 25, 1996.

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EXHIBIT "B"

Description of Additional Property

All that tract or parcel of land lying and being in Land Lots 516 and 549 of District 1, Section 2, Fulton County, Georgia, within the City of Roswell, and being more particularly described as follows:

To find the point of beginning, commence at a concrete monument located at the northwest corner of Land Lot 516, said corner being the common corner of Land Lots 511, 512, 515 and 516; thence go North 86 degrees 16 minutes 40 seconds East 595.10 feet along the north line of Land Lot 516 to a point, which point is the Point of Beginning;

From said Point of Beginning, thence South 89 degrees 13 minutes 14 seconds East for a distance of 1027.12 feet along the north lines of Land Lots 516 and 549 to a point; thence South 1 degree 11 minutes 08 seconds West a distance of 822.33 feet to a point; thence North 88 degrees 48 minutes 52 seconds West for a distance of 424.22 feet to the centerline of Foe Killer Creek; thence North 50 degrees 06 minutes 58 seconds West for a distance of 53.06 feet along the centerline of Foe Killer Creek to a point; thence North 46 degrees 15 minutes 11 seconds West for a distance of 196.27 feet along the centerline of Foe Killer Creek to a point; thence North 46 degrees 52 minutes 02 seconds West for a distance of 202.39 feet along the centerline of Foe Killer Creek to a point; thence North 44 degrees 55 minutes 12 seconds West for a distance of 201.71 feet along the centerline of Foe Killer Creek to a point; thence North 45 degrees 40 minutes 30 seconds West for a distance of 160.38 feet along the centerline of Foe Killer Creek to a point; thence leaving Foe Killer Creek and running North 0 degrees 19 minutes 16 seconds East for a distance of 60.00 feet to a point; thence North 0 degrees 19 minutes 16 seconds East for a distance of 204.29 feet to a point located on the north line of Land Lot 516 and the Point of Beginning.

Together with and subject to covenants, easements and restrictions of record.

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