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DECLARATION OF CONDOMINIUM  
FOR  
THE ORCHARDS OF HABERSHAM GROVE CONDOMINIUM

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STATE OF GEORGIA  
COUNTY OF FORSYTH

**DECLARATION OF CONDOMINIUM**

**FOR**

**THE ORCHARDS OF HABERSHAM GROVE CONDOMINIUM**

THIS DECLARATION is made on the date set forth below by The Orchards of Habersham Grove, LLLP, a Georgia limited liability limited partnership (hereinafter referred to as "Declarant");

WITNESSETH

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

WHEREAS, a plat of survey related to the Condominium prepared by CC Land Surveyors dated 6-22-06 and last amended on N/A, was filed in Condominium Plat Book CO2, Page(s) 75, Forsyth County, Georgia Records;

WHEREAS, floor plans relating to the Condominium prepared by Fine Room Design, Inc. were filed in Floor Plan Book FPI, Page(s) 409-413 Forsyth County, Georgia Records;

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

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.

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1. NAME.

The name of the condominium is The Orchards of Habersham Grove Condominium (hereinafter sometimes called "The Orchards of Habersham Grove" or the "Condominium," as further defined herein), which condominium is hereby submitted by Declarant to the Georgia Condominium Act, O.C.G.A. § 44-3-70, *et seq.*, as amended.

2. DEFINITIONS.

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

a) Act shall mean the Georgia Condominium Act, O.C.G.A. § 44-3-70, *et seq.*, as such Act may be amended from time to time.

b) Additional Property shall mean that property described in Exhibit "B" attached hereto and incorporated herein, which Declarant may, but shall have no obligation to, submit to the Condominium as provided in this Declaration.

c) Architectural Control Committee or ACC shall mean the committee established to exercise the architectural review powers set forth in Paragraph 13 hereof, which shall be the Board of Directors of the Association unless by resolution the Board appoints a separate Architectural Control Committee.

d) Area of Common Responsibility shall mean and refer to the Common Elements, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any other Person or entity, become the responsibility of the Association.

e) Articles or Articles of Incorporation shall mean the Articles of Incorporation of The Orchards of Habersham Grove Condominium Association, Inc., which have been filed with the Secretary of State of the State of Georgia.

(f) Association shall mean The Orchards of Habersham Grove Condominium Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

(g) Board or Board of Directors shall mean the board of directors of the Association, which shall be the body responsible for management and operation of the Association.

(h) Bylaws shall mean the Bylaws of The Orchards of Habersham Grove Condominium Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference.

(i) Common Elements shall mean those portions of the property subject to this Declaration, which are not included within the boundaries of a Unit, as more particularly described in this Declaration.

(j) Common Expenses shall mean the expenses incurred or anticipated to be incurred by the Association for the general benefit of the Condominium including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Elements.

(k) Condominium shall mean 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 and any property described in Exhibit "B" that is later submitted to the provisions of the Act and this Declaration.

(l) Condominium Instruments shall mean this Declaration and all exhibits to this Declaration, including the Bylaws of the Association, and the Survey and Floor Plans, all as may be supplemented or amended from time to time.

(m) Contractor shall mean any Person, firm, partnership, corporation, association, or other organization that is engaged in the business of designing, developing, constructing, or selling dwellings or the alteration of or addition to an existing dwelling, repair of a new or existing dwelling, or construction, sale, alteration, addition, or repair of an appurtenance to a new or existing dwelling, including, but not limited to, Declarant. The term includes:

(i) An owner, officer, director, shareholder, partner, or employee of the contractor;

(ii) Subcontractors and suppliers of labor and materials used by a contractor in a dwelling; and

(iii) A risk retention group registered under applicable law, if any.

(n) Declarant shall mean The Orchards of Habersham Grove, LLLP, a Georgia limited liability limited partnership, its respective successors and assigns and any other Person as further set forth in Section 44-3-71(13) of the Act, provided that such successors and/or assignee are designated in writing by Declarant as its successor and/or assign of the rights of Declarant set forth herein. The expiration of the Declarant Control Period shall not terminate or alter the status of the above-referenced entity and its successor and/or assign, as Declarant hereunder or divest it of other rights specifically reserved to Declarant herein.

(o) Declarant Control Period shall mean the period of time during which the Declarant is entitled to appoint and remove the members of the Board of Directors as provided in Article III, Part A, Section 2 of the Bylaws.

(p) Declarant's Easement Area shall mean that certain area, as shown on the Floor Plans, that Declarant has the right to use exclusively for any purpose it deems appropriate as set forth in subparagraph 2l(g).

(q) Electronic Document shall mean information created, transmitted, received or stored by electronic means and retrievable in human perceivable form including, without limitation, e-mail, web pages, electronic documents, and facsimile transmissions.

(r) Electronic Signature shall mean a signature created, transmitted, received or stored by electronic means and includes, but is not limited to, a Secure Electronic Signature.

(s) Eligible Mortgage Holder shall mean those holders of first Mortgages secured by Units in the Condominium who have requested notice of certain items as set forth in this Declaration.

(t) Floor Plans shall mean the floor plans for The Orchards of Habersham Grove Condominium, filed in the condominium file cabinet of the Forsyth County, Georgia records.

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

(v) Majority shall mean more than fifty percent (50%) of the total eligible number.

(w) Mortgage shall refer to any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation including, but not limited to, a transfer or conveyance of fee title for such purpose.

(x) Mortgagee or Mortgage Holder shall mean the holder of any Mortgage.

(y) Occupant shall mean any Person staying overnight in a Unit for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year, regardless of whether such Person is a tenant or the Owner of such Unit.

(z) Owner shall mean the record titleholder of a Unit within the Condominium, but shall not include a Person who is only a Mortgage Holder.

(aa) Person shall mean any individual, corporation, firm, association, partnership, trust, or other legal entity.

(bb) Secure Electronic Signature shall mean an electronic or digital method executed or adopted by a Person with the intent to be bound by or to authenticate a record, which is unique to the Person using it, is capable of verification, is under the sole control of the Person using it, and is linked to data in such a manner that if the data is changed, the electronic signature is invalidated.

(cc) Survey shall mean the plat of survey for The Orchards of Habersham Grove Condominium, filed in the condominium plat book of the Forsyth County, Georgia records.

(dd) Total Association Vote shall mean all of the eligible votes attributed to members of the Association (including votes attributable to Declarant), and the consent of Declarant for so long as Declarant owns a Unit primarily for the purpose of sale.

(ee) Unit shall mean that portion of the Condominium intended for individual ownership and use as more particularly described in this Declaration and shall include the undivided ownership in the Common Elements assigned to the Unit by this Declaration.

### 3. LOCATION, PROPERTY DESCRIPTION, PLATS AND PLANS

The Condominium subject to this Declaration and the Act is located in Land Lots 293 and 294 of the 2nd District, 1st Section of Forsyth County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. The Survey and Floor Plans relating to the Condominium will be filed in the Forsyth County, Georgia records at the time the Condominium property is submitted to this Declaration. The Survey and Floor Plans are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

So long as Declarant owns a Unit, Declarant reserves the right, but shall have no obligation, to make improvements and changes to all or part of the Common Elements and the Units owned by Declarant (other than changes to the location of Unit boundaries unless expressly permitted herein), including, without limitation, addition and realignment of parking spaces, addition and reconfiguration of storage 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 will be initially divided into eighty-eight (88) separate Units, and Common

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

a) Vertical Boundaries. The perimetrical or vertical boundaries of each Unit shall be the vertical planes formed by the outermost surface of the studs in the walls separating the Unit from the exterior wall of the Condominium building. With respect to common walls between the Units, the perimetrical or vertical boundary of the Units served thereby shall be the centerline of such wall. The vertical boundaries include the wallboard or other material comprising the interior wall of the Unit.

b) Horizontal Boundaries. The upper horizontal boundary of each Unit located in the Condominium shall be the horizontal plane formed by the lowermost surface of the ceiling joists of such Unit. The upper horizontal boundary includes, but is not limited to, the wallboard or other material comprising the ceiling of the Unit. The lower horizontal boundary of each Unit located in the Condominium shall be the plane formed by the uppermost surface of the unfinished subflooring of the Unit, with the flooring constituting part of the Unit but the subflooring not constituting part of the Unit.

c) Additional Information to Interpret Unit Boundaries. Entry doors and exterior glass surfaces, including, but not limited to, windows and glass doors, serving the Unit shall be included within the boundaries of the Unit. Heating and air conditioning systems serving a single Unit (including any part of any such system located outside the boundaries of the Unit), all duct work for heating and air conditioning systems and appliances and plumbing fixtures within a Unit shall be part of the Unit.

If any chutes, flues, ducts, conduits, wires, pipes or other apparatus lies partially within and partially outside of the designated boundaries of the Unit, any portion thereof which serves only that Unit shall be deemed to be a part of that Unit, while any portions thereof which serve more than one (1) Unit or any portion of the Common Elements shall be deemed a part of the Common Elements, except that any chimney, fireplace flue, damper and chimney cap shall not be deemed part of a Unit, but shall be considered a Limited Common Element assigned to such Unit as set forth below.

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

The ownership of each Unit shall include, and 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, without limitation, certain utility infrastructures, fences, entry feature and lighting for same, paving, the foundations, roofs, exterior walls of the buildings, detention ponds, landscape areas, clubhouse with fitness center and card room, swimming pool, and all other lighting in any Common Element of the Condominium buildings.



Ownership of the Common Elements shall be by the Owners as tenants-in-common. Each Unit is assigned an equal percentage of undivided 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 25 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 or any other Person shall bring any action for partition or division of the whole or any part thereof except as provided in the Act. Except as provided for Limited Common Elements or as otherwise provided herein, each Owner and the Association may use the Common Elements for the purposes for which they are intended, but no such use shall enter or encroach upon the lawful rights of the other Owners.

6. LIMITED COMMON ELEMENTS.

a) The Limited Common Elements located on the Condominium and the Unit(s) to which they are assigned are:

(i) any sidewalk or driveway which serves only one (1) Unit is assigned as a Limited Common Element to the Unit so served;

(ii) the portion of the Common Elements on which there is located any portion of the air conditioning or heating system exclusively serving a particular Unit or Units is assigned as a Limited Common Element to the Unit or Units so served;

(iii) any utility meter which serves only one (1) Unit is assigned as a Limited Common Element to the Unit so served;

(iv) any patio or porch attached to and serving only one (1) Unit is assigned as a Limited Common Element to the Unit to which it is attached and which it serves;

(v) any skylight attached to and serving only one (1) Unit is assigned as a Limited Common Element to the Unit to which it is attached and which it serves;

(vi) any chimney (including the flue, damper and chimney cap) adjoined and connected to a Unit or Units are assigned as Limited Common Elements to the Unit or Units to which they are adjoined and connected; and

(vii) each Unit is assigned one (1) mailbox or mail slot, to be initially assigned in the sole discretion of Declarant.

b) The Board of Directors, without need for a membership vote, is hereby authorized to assign and to reassign Limited Common Elements and Common Elements not previously assigned, provided that any such assignment or reassignment shall be made in accordance with the provisions of Section 44-3-82(b) and (c) of the Act. A Common Element not previously assigned as a Limited Common Element may be so assigned and a Limited Common Element may be reassigned by the Board, without the need for a vote of the Association, upon written application to the Association by the Owner or Owners for whose exclusive use such Common Element is requested or whose use of the Limited Common Element previously assigned is directly affected. Upon such application, the Association shall prepare and execute an amendment to the Declaration assigning the Common Element as a Limited Common Element or

reassigning the Limited Common Element, which amendment shall be executed by the Owner or Owners making such application. Such amendment shall be delivered and become effective as provided in Section 44-3-82 of the Act. For so long as Declarant owns a Unit primarily for the purpose of sale, an amendment to assign a Common Element, not previously assigned as a Limited Common Element shall be executed by the officers of the Association, if the request is made by Declarant. The Board has the right to approve or disapprove any such request made by any Person other than Declarant.

7. ASSOCIATION MEMBERSHIP AND ALLOCATION OF VOTES.

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

8. ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

a) Except as provided below or elsewhere in the Act or Condominium Instruments, the amount of all Common Expenses shall be assessed equally against all the Units.

b) The Board of Directors shall have the power to levy special assessments against Units pursuant to this Paragraph and to Section 44-3-80(b) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board of Directors to exercise its authority under this Paragraph shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Paragraph in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Paragraph.

(i) 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 that are benefited according to the benefit received. Except for expenses for maintenance, repair or replacement of Limited Common Elements, which may be specially assessed, expenses incurred for the maintenance, repair or replacement of the Area of Common Responsibility. shall not be specially assessed.

(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 or Units may be specially assessed against such Unit or Units.

9. ASSOCIATION RIGHTS AND RESTRICTIONS.

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

a) to enter into Units for maintenance, emergency, security, or life-safety purposes, which right may be exercised by the Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit. For the purposes of this Paragraph, an emergency justifying immediate entry into a Unit shall include, but not be limited to, the following situations: a water or other

utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a Person or animal might be injured or sick and require immediate medical attention. No one exercising the rights granted in this subparagraph shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights, except as provided in the Act. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above- referenced parties, it being agreed that no duty to enter a Unit shall exist;

b) to make and to enforce reasonable rules and regulations governing the use of the Condominium, including the Units, Limited Common Elements, and Common Elements;

c) to enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by the imposition of reasonable monetary fines and suspension of use and voting privileges as provided in Section 44-3-76 of the Act, as amended;

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

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

(f) to represent and act on behalf of the Owners in the event of damage or destruction as a result of casualty loss in accordance with the provisions of the Act and Paragraph 12 of this Declaration;

(g) to represent and act on behalf of the Owners in the event of any loss resulting from condemnation or eminent domain in accordance with the provisions of the Act and Paragraph 20 of this Declaration;

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

(i) to collect security deposits in reasonable amounts, as determined by the Board of Directors in its sole discretion, to protect against any damage to the Condominium, including, without limitation, damage resulting from: moving in or out of a Unit; the transportation and use of construction materials in the Condominium; and the alteration, modification, or addition to a Unit and any Limited Common Element appurtenant thereto. Costs for repair of such damage may be deductible from the security deposit and any additional expenses may be specifically assessed against the Unit under subparagraph 8(b)(ii) above;

(j) to approve contractors or subcontractors who have access to the Condominium for the purpose of making repairs or improvements to Units based on rules and regulations promulgated and adopted by the Board which may include, without limitation: financial stability of the contractors and/or subcontractors; history of compliance with the Condominium Instruments and rules and regulations of the Association; and other factors that may be reflective of quality and ability;

(k) at the sole expense of the Association, without need for a membership vote, and without the consent of any affected Owner, to relocate any portion of the air conditioning, heating, plumbing, ventilating, exhaust or electrical system serving a particular Unit, provided that after such relocation, the system serving the Unit functions at least as well and at no greater cost to the Owner as existed prior to the relocation;

(l) to close permanently or temporarily any portion of the Common Elements (excluding the Limited Common Elements, and any Common Elements the use of which is reasonably necessary for access to or from a Unit and any portion of the Common Elements over, on, upon or which Declarant has an easement) 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

(m) to enter into joint agreements and contracts with other homeowners associations for the provision of services, including, without limitation, management, landscaping, property monitoring services, and trash removal services.

#### 10. ASSESSMENTS.

a) Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Units in the Condominium as may be more specifically authorized from time to time by the Board.

b) Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Unit which are established pursuant to the terms of this Declaration, including but not limited to reasonable fines imposed in accordance with the terms of this Declaration.

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

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors; unless otherwise provided, the annual assessments shall be paid in equal monthly installments due on the first day of each calendar month. No Owner may exempt himself 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 a dispute arising from the Association's performance of its duties. The lien provided for herein shall have priority as provided in the Act.

The Board of Directors shall have the right to: (i) not spend the full amount budgeted for any particular line item in the budget; (ii) spend more than what has been budgeted; and (iii) shift revenues within the budget from one line to another.

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 Dollars (\$10) or ten percent (10%) of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner and interest at the rate of ten percent (10%) per annum or such higher rate as may be permitted by the Act shall accrue from the due date.

(ii) If part payment of assessments and related charges is made, the amount received may be applied first to costs and reasonable attorneys' fees actually incurred, then to late charges, then to interest, then to delinquent assessments, and then to current assessments.

(iii) If assessments, fines or other charges or any part thereof due from an Owner remain delinquent and unpaid for a period greater than fifteen (15) days from the date due, a notice of delinquency may be given to that Owner stating that if the assessment, fine or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, **the Board of Directors may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment and of any special assessment without any further notice being given to the delinquent Owner. Upon acceleration, that Owner shall thereby lose the privilege of paying the annual assessment in monthly installments for that fiscal year.**

(iv) If assessments and other charges or any part thereof remain unpaid more 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, including reasonable attorneys' fees actually incurred, and suspend the Owner and/or Occupant's right to use the Common Elements, including the right to bring or park vehicles on the Common Elements or have guests bring or park vehicles on the Common Elements. However, the Board may not limit pedestrian, medical, fire, police or other health, safety, service or emergency vehicle ingress or egress to or from the Unit or deny necessary parking of clearly and properly identified handicapped vehicles used by handicapped owners or occupants protected by the Fair Housing Amendments Act of 1988. Prior to suspending parking privileges, the Association shall provide the delinquent Owner or Occupant written notice of its intention to do so, sent by certified mail not less than ten (10) days prior to the date of such suspension.

(v) If any assessment or other charge is delinquent for thirty (30) days or more, and the Association has obtained judgment(s) totaling more than Seven Hundred Fifty Dollars (\$750) against the Owner or encumbering the Unit, then, in addition to all other rights provided in the Act and herein, the Association shall have the right, in compliance with any requirements set forth in the Section 44-3-76 of the Act, to suspend water, electricity, gas, heat, air conditioning, or other utility services to the Unit paid for as a Common Expense by the Association. Any costs incurred by the Association in discontinuing and/or reconnecting any utility service, including reasonable attorneys' fees, shall be an assessment against the Unit. The utility services shall not be required to be restored until the judgment(s) is(are) paid in full, at which time the Association shall make arrangements for restoration of the service. An Owner whose utility or service has been suspended hereunder shall not be entitled to use any such utility or service from any source, and any such unauthorized use shall be considered a theft of services under O.C.G.A. Section 16-8-5.

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

d) Computation of Operating Budget and Assessment. The Board shall send a copy of the annual operating budget and notice of the amount of the General Assessment for the following year to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Owners holding at least sixty-seven percent (67%) of the Total Association Vote and, during the Declarant Control Period, by Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except

on petition of the Owners as provided for special meetings in the Bylaws, which petition must be presented to the Board within twenty (20) days after delivery of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. In such event or if the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year. The Board shall send a copy of the revised budget to each Owner at least thirty (30) days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

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

e) Special Assessments. In addition to the annual assessment provided for in subparagraph (b) above, the Board may, at any time, and in addition to any other rights it may have, levy a special assessment against all Owners, notice of which shall be sent to all Owners. Any special assessment (except as provided in subparagraph 8(b) regarding the power to assess specially pursuant to Section 44-3-80(b) of the Act and subparagraph 12(b) herein, regarding repair or reconstruction of casualty damage to or destruction of all or part of the Condominium) which would cause the average total of special assessments levied in one (1) fiscal year to exceed Two Hundred Dollars (\$200) per Unit or such higher amount as is authorized by the Act, shall be approved by a majority of the Total Association Vote prior to becoming effective.

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

(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) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding Ten Dollars (\$10), or such higher amount as may be authorized by the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Unit as of the date specified therein.

(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 after the application of such common profits to the payment of Common Expenses shall, at the

option of the Board of Directors, either be distributed to the Owners or credited to the next assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Unit, or added to the Association's capital reserve account as set forth in (f) above.

If the Board of Directors reasonably determines that during a fiscal year there will likely be a surplus of funds at the end of such fiscal year (excluding amounts designated for reserves), the Board may, but shall not be required to, reduce the amount of the annual assessment to be collected from the Owners for the remainder of that fiscal year. Any Owner who has already paid the entire annual assessment at the time of such reduction shall, in the discretion of the Owner, either receive a refund of the overpayment or a credit of the amount of the overpayment towards the annual assessment of the Association for the following fiscal year. Notwithstanding the above, the Association may first apply the amount of any overpayment toward any other amount the Owner may owe to the Association.

(i) Working Capital Fund. Declarant, on behalf of the Association, shall establish a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services. A non-refundable contribution to the working capital fund of the Association shall be paid by the purchaser of a Unit at the closing of each sale or resale of a Unit in the amount of two (2) months of the general assessment charged to such Unit. Declarant shall not use the working capital funds to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association. Notwithstanding anything to the contrary herein, the contribution to the working capital fund shall not be due from: (i) any grantee who is the spouse or former spouse of the grantor; (ii) any grantee that is a wholly-owned entity of the grantor; (iii) any grantee to whom a Unit is conveyed by a will or through the law of intestacy; or (iv) any grantee of a Unit who obtains title pursuant to judicial or non-judicial foreclosure of any first Mortgage of record or secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Unit).

## 11. INSURANCE.

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

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

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

All insurance coverage for the Association shall be written in the name of the Association as trustee

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

(a) The Board of Directors shall utilize commercially reasonable efforts to secure a blanket hazard insurance policy providing "special perils" coverage in an amount equal to full replacement cost, before application of deductibles, of all structures located on the Condominium as required by Section 44-3-107 of the Act. If "special perils" coverage is not reasonably available at reasonable cost, the Board shall obtain, at a minimum, fire and extended coverage, including coverage for vandalism and malicious mischief, in like amounts. The Board shall use commercially reasonable efforts to obtain policies that will provide the following:

(i) the insurer waives its rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners, Occupants, and their respective household members;

(ii) any "other insurance" clause contained in the master policy shall expressly exclude individual Owners' policies from its operation;

(iii) until the expiration of ten (10) days after the insurer gives notice in writing to the Mortgagee of any Unit, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit, the other Owners, the Board of Directors, or any of their agents, employees, or household members, nor be canceled for nonpayment of premiums;

(iv) the master policy may not be canceled, substantially modified, or subjected to nonrenewal without at least ten (10) days prior notice in writing to the Board of Directors and all Mortgagees of Units;

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

(vi) an inflation guard endorsement or a comparable annual increase in values at renewal.

(b) All policies of insurance shall be written with a company licensed to do business in the State of Georgia and with a minimum A. M. Best rating of A-, VIII. 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 of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees. Each Owner shall notify the Board of Directors of all structural improvements made by the Owner to his 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 expense and personal property belonging to such Owner, shall file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after the purchase of such insurance. Such Owner shall also promptly notify, in writing, the Board of Directors in the event such policy is cancelled.



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

(i) workers' compensation insurance if and to the extent necessary to meet the requirements of law;

(ii) public liability insurance in amounts no less than required by Section 44-3-107 of the Act, as amended, and officers and directors' liability insurance in such amounts as the Board may determine. The public liability insurance shall contain a cross liability endorsement;

(iii) fidelity bonds, if reasonably available, covering officers, directors, employees, and other Persons who handle or are responsible for handling Association funds. Such bonds, if reasonably available, shall be in an amount consistent with the best business judgment of the Board of Directors, but in no event less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on the implementation of financial controls which take one or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two (2) members of the Board of Directors must sign any checks written on the reserve account; and

(iv) such other insurance as the Board of Directors may determine to be necessary or desirable including, for example coverage of the following types of property contained within a Unit, regardless of ownership: (A) fixtures, improvements and alterations that are part of the building or structure; and (B) appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping.

(f) Insurance carried by the Association as a Common Expense shall not be required to include: (i) any part of a Unit that is not depicted on the original Survey and Floor Plans; or (ii) any part of a Unit that was not included as part of the collateral for the initial loan made for the initial purchase of the Unit, nor shall the Association include public liability insurance for individual Owners for liability arising within the Unit.

(g) Nothing contained herein gives any Owner or other party a priority over any rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Unit on which there is a Mortgagee endorsement shall be disbursed jointly to such Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee.

(h) Every Owner shall be obligated to obtain and maintain at all times insurance covering those portions of his Unit to the extent not insured by policies maintained by the Association. Upon request by the Board, the Owner shall furnish a copy of such insurance policy or policies to the Association. In the event that any such Owner fails to obtain insurance as required by this subparagraph, the Association may purchase such insurance on behalf of the Owner and assess the cost thereof to the Owner, to be collected in the manner provided for collection of assessments under Paragraph 10 hereof.

(i) Insurance Deductibles. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the Person or Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one (1) Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected owner's portion of the total cost of repair. Notwithstanding the foregoing, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Owner shall be responsible for paying the deductible pertaining to his Unit, if any. If any Owner or Owners fail to pay the deductible when required under this subparagraph, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to Paragraph 8 of this Declaration; provided, however, where the deductible is for insurance required under the Act, no Owner shall be assigned more than Two Thousand Five Hundred Dollars (\$2,500), or such higher amount as authorized by the Act, as the cost of the deductible for any one (1) occurrence.

(j) Payment of Claims to Delinquent Owners. Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of assessments owed to the Association under Paragraph 10 hereof, then the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

## 12. REPAIR AND RECONSTRUCTION.

In the event of damage to or destruction of all or any part of the Condominium as a result of fire or other casualty, unless eighty percent (80%) of the Owners, including the Owner or Owners of any damaged Unit or Units, vote not to proceed with the reconstruction and repair of the structure, the Board of Directors or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any 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 that existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair, as determined by the Board of Directors, the additional cost shall be a Common Expense. If, for any reason, the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair, as determined by the Board, the additional costs shall be assessed against the Owners of the Unit(s) damaged in proportion to the damage to the Units or against all Owners, in the case of insufficient funds to cover damage to the Common Elements. This assessment shall not be considered a special assessment as discussed in subparagraph 10(e). If there are surplus funds after repair and reconstruction is completed, such funds shall be common funds of the Association to be used as directed by the Board.

(c) Floor Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the Floor Plans and specifications under which the Condominium was originally constructed to standard finish so as to exclude any upgrades made to Units, except where changes are

necessary to comply with current applicable building codes or where improvements not in accordance with the original Floor Plans and specifications 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 that may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Condominium was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

(e) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Owners on account of such casualty shall constitute a construction fund, 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 structure as are designated by the Board of Directors.

### 13. ARCHITECTURAL CONTROLS.

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

(b) After the Declarant Control Period. After expiration of the Declarant Control Period, an Architectural Control Committee shall be appointed by the Board of Directors and except for Declarant, so long as Declarant shall own a Unit for sale, no Owner, Occupant, or any other Person may make any encroachment onto the Common Elements or Limited Common Elements, or make any exterior change, addition, alteration, or construction (including painting and landscaping), nor erect, place or post any object, sign, clothesline, speaker, playground equipment, light, fountain, flag, personalized or customized exterior door mat, or thing on the exterior or roofs of the buildings, in any windows (except window treatments as provided herein), on any Limited Common Elements, or on any other Common Elements, without first obtaining the written approval of the ACC. However, a cross, mezuzah, or similar religious symbol not larger than three inches (3") in width and nine inches (9") in height may be posted on the doorframe of the Unit. In addition, reasonable Christmas or seasonal decorative lights may be displayed between Thanksgiving and January 15. The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing

buildings, Units and structures, the location in relation to surrounding structures and topography, and the impact of such approval, if any, on the increase or decrease of sounds and vibrations between the Units and between the Units and the Common Elements. Notwithstanding the above, Declarant shall not be required to obtain any approvals under this Paragraph.

(c) Alteration of Units. Subject to the other provisions of this Declaration, alterations to the interiors of Units, relocation of the boundaries between adjoining Units, and subdivision of Units are subject to the following restrictions:

(i) Alterations to the Interiors of the Units. Except as provided herein, no Owner or Occupant may make any alteration within a Unit which involves connecting to Common Element pipes, lines, conduits and/or other apparatus for access to common utilities without prior written ACC approval. Except as provided herein, no Owner or Occupant shall make any interior modifications to or place an excessive load on any structural or load bearing portions of a Unit without first obtaining the prior written approval of the ACC. Such approval shall not be granted by the ACC unless the Owner has presented to the ACC a report or drawing prepared by a licensed structural engineer, experienced in such determinations, showing that compensating measures will be taken to ensure the structural integrity of the Unit and the Condominium. All building code requirements must be complied with and necessary permits and approvals secured for any modifications. Notwithstanding the above, all Owners desiring to make any interior modifications or alterations to a Unit affecting the Common Elements or structure or load bearing portions of a Unit must make application to the ACC as described below in order for the ACC to make the determination of whether the ACC's approval is required.

Notwithstanding the above, if any Owner acquires an adjoining Unit, such Owner shall have the right (subject to the prior written approval of the Mortgagees of the Units involved) to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may, in whole or part, be part of the Common Elements, so long as no portion of any structural or load bearing portions of the Unit(s) are materially weakened or removed and the ACC has approved the plans described above and no portion of any Common Elements is damaged, destroyed or endangered, other than that partition and any chutes, flues, ducts, conduits, wires or other apparatus contained therein which shall be relocated by such Owner if such facilities serve any other part of the Condominium. Notwithstanding the above, Declarant shall not be required to obtain any approvals under this Paragraph. The alterations permitted in this Paragraph shall not be deemed an alteration or relocation of boundaries between adjoining Units as defined in O.C.G.A. §44-3-91.

(ii) Relocation of Boundaries. Boundaries between adjoining Units shall not be relocated; provided, however, Declarant shall have the right to relocate boundaries between Units owned by Declarant without the approval of the Board of Directors, and the Board of Directors shall execute the required amendment to the Declaration.

(iii) Subdivision of Units. No Unit shall be subdivided into a smaller Unit or Units.

(d) Applications. Applications for approval of any architectural modification described in subparagraph 13(a), 13(b), or 13(c) above shall be in writing and shall provide such information as the ACC may reasonably require. Once an application and all required information is received by the ACC, the ACC shall stamp the application as being complete and shall then forward to the applicant a written notice of application completion (the "Notice of Application Completion"). The ACC shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction that is not in conformance with approved plans. The Board or ACC may publish written architectural standards for exterior and Common Element alterations or additions,

and any request in substantial compliance therewith shall be approved; provided, however, each such requested change shall be in harmony with the external design of the existing buildings and Units and the location in relation to surrounding structures and topography of the vicinity.

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

(e) Appeal. In the event that the ACC or its designated representative disapproves any application or part thereof, an Owner shall have the right to appeal the ACC's decision to the Board of Directors. The Board shall rule on the appeal within forty-five (45) days of receiving written notice requesting an appeal from the Owner. In ruling on the appeal, the Board shall consider all relevant materials presented to it by either the Owner or the ACC, the decision of the ACC, and the application of the Owner to the ACC. The Board of Directors shall have the final authority to approve, disapprove, or conditionally approve or disapprove the application of the Owner. If the Board does not receive written notice from the Owner by certified mail requesting an appeal within fourteen (14) days from the date of the ACC's notice to the Owner of its decision, the decision of the ACC shall become final and all rights of appeal shall terminate and thereafter be void.

(f) Encroachments onto Common Elements. The ACC, subject to this Paragraph, may permit Owners to make encroachments onto the Common Elements as it deems acceptable.

(g) Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself and his successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance of such change, modification, addition, or alteration, unless otherwise agreed to in writing by the ACC. It is the responsibility of every Owner of a Unit to determine for himself what architectural modifications have been made to his Unit by any predecessor-in-interest. In the discretion of the Board or ACC, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself and all successors-in-interest.

(h) Limitation of Liability. Review and approval of any application pursuant to this Paragraph is made on the basis of aesthetic considerations only, and neither Declarant, the Board of Directors or the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither Declarant, the Association, the Board of Directors, the ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

(i) No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors and ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. Each Owner further acknowledges that the Board of Directors and ACC may adopt different architectural standards for different parts of the Condominium, based on street visibility and location of the proposed modification in the building. The approval of either the Board of Directors or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board of Directors, or the ACC shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(j) Enforcement. Any construction, alteration, or other work done in violation of this Paragraph shall be deemed to be nonconforming. Upon written request from the Board or the ACC, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorneys' fees, may be assessed against the benefited Unit and collected as an assessment pursuant to this Declaration.

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

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

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

#### 14. USE RESTRICTIONS.

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

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

(a) Use of Units. Each Unit shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Unit or any part of the Condominium, except that the Owner or Occupant residing in a Unit may conduct ancillary business activities within the Unit so long as:

- (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the Unit;

(ii) the business activity does not involve visitation of the Unit by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential Unit without business activity;

(iii) the business activity is legal and conforms to all zoning requirements for the Condominium;

(iv) the business activity does not unreasonably increase traffic in the Condominium in excess of what would normally be expected for residential Units in the Condominium without business activity (other than by a reasonable number of deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);

(v) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;

(vi) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium, as determined in the Board's discretion; and

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

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

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

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

(c) Outbuildings. No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected by any Owner or Occupant, other than Declarant, on any portion of the Condominium, at any time, either temporarily or permanently, without the prior written approval of the Board.

(d) Use of Common Elements Including Amenities. There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Elements without the prior written consent of the Board, except as specifically provided herein. All Owners and Occupants are prohibited from using the detention pond area, if any, for any recreational purpose. With prior written Board approval, and subject to any restrictions imposed by the Board, an Owner may reserve portions of the Common Elements for use for a period of time as set by the Board.

Any such Owner who reserves a portion of the Common Elements as provided herein shall assume, on behalf of himself and his guests, Occupants and family, all risks associated with the use of the Common Elements and all liability for any damage or injury to any Person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees. There shall be no use of the roofs of the Condominium buildings by the Owners, their family members, guests, tenants, invitees, agents or contractors. The Association and its agents and contractors shall have access to the roofs for performing its maintenance and repair responsibility. There shall be no gardening or landscaping on the Common Elements by Owners or Occupants without the prior written consent of the Board. This subparagraph shall not apply to Declarant, for so long as Declarant shall own a Unit for sale.

(e) Use of Limited Common Elements, Patios and Porches. Except as otherwise provided herein, the use of the Limited Common Elements assigned to the Units is restricted exclusively to the Owners of the Unit to which such Limited Common Elements are assigned, and said Owner's family members, guests, tenants and invitees. The Limited Common Elements are reserved for exclusive use, but shall not be construed or interpreted to be separate and apart from the Common Elements in general, and the restrictions applicable to the Common Elements shall also apply to the Limited Common Elements.

(i) Patios and Porches. No objects other than a reasonable number of potted plants, as determined by the Board, and patio furniture of a size and type approved by the Board shall be placed on a patio or porch. Except as may be authorized by the Board, the foregoing prohibition applies to objects such as, but not limited to, grill accessories, bicycles, laundry garments, towels and objects other than a reasonable number of potted plants, as determined by the Board, and patio furniture of a size and type approved by the Board. Patio furniture coverings, including cushions and table umbrellas, shall be of a solid neutral color, as determined by the Board, without fringes or other types of adornments, and table umbrellas shall be closed at all times when not in use. All potted plants located on a patio or porch shall not be overgrown and shall be maintained in good condition or removed from the patio or porch. A grill may be placed on a patio or porch so long as the grill is completely covered with a black or dark cover designed specifically to cover the grill when the grill is not in use. Grill covers must be maintained in good condition. Objects shall not be permitted to hang over or be attached to any exterior patio wall or to otherwise protrude outside of the vertical plane formed by the exterior surface of the patio or porch wall. Penetration of the surfaces of a patio or porch wall or floor is prohibited. Enclosure of a patio is also prohibited. As used herein, "enclosure" shall mean the permanent enclosure of a patio into the heated and cooled space within the boundaries of a Unit.

(f) Prohibition of Damage, Nuisance and Noise. Without the prior written consent of the Board of Directors, nothing shall be done or kept on the Condominium, or any part thereof, which would increase the rate of insurance on the Condominium or any Unit or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

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

Furthermore, noxious, destructive or offensive activity shall not be carried on within any portion of the Condominium. No Owner or Occupant of a Unit may use or allow the use of the Unit or any portion of the Condominium at any time, in any way or for any purpose which may endanger the health, unreasonably annoy or disturb or cause embarrassment, or discomfort to other Owners or Occupants, or in such a way as



to constitute, in the sole opinion of the Board of Directors, a nuisance. In addition, no Owner or Occupant of a Unit may use or allow the use of a Unit or the Common Elements in any manner which creates disturbing noises, including, without limitation, use of stereo speakers or equipment that will in the sole discretion of the Board of Directors interfere with the rights, comfort or convenience of the other Owners or Occupants. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his property or personal rights.

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

No damage to or waste of the Common Elements, or any part thereof, shall be permitted by any Owner or member of his 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 family, guests, invitees, or Occupants of his Unit.

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

(h) Animals. No Owner or Occupant may keep any animal on any portion of the Condominium except as expressly permitted in this subparagraph. An Owner or Occupant may keep dogs and cats in a Unit, but no more than a total of two (2), and a reasonable number of other generally recognized household pets, as determined in the Board's sole discretion, weighing less than two (2) pounds each (including by way of illustration, but not limitation, fish, gerbils and small birds).

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

No potbellied pigs, venomous snakes, pit bulldogs, Rotweillers, or Doberman Pinschers, may be brought onto or kept on the Condominium at any time. In addition, other animals determined in the Board's sole discretion to be dangerous or a nuisance shall not be brought onto or kept on the Condominium at any time. The Board may require that any pet that, in the Board's opinion, endangers the health of any Owner or Occupant or creates a nuisance or unreasonable disturbance, be permanently removed from the Condominium upon seven (7) days written notice. If the Owner or Occupant fails to do so, the Board may remove the pet. The Board may remove any pet, which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any community member, without prior notice to the pet's owner.

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

(i) Parking. Vehicles permitted under this subparagraph (i) shall be parked in areas specified herein or in designated areas authorized in writing by the Board. No Owner or Occupant may keep or bring onto the Condominium more than a reasonable number of vehicles, at any time, as determined by the Board. All vehicles of an Owner or Occupant shall be parked within a garage. Notwithstanding the foregoing, a vehicle of an Owner or Occupant may be parked on a Limited Common Element driveway serving the Unit without prior Board approval for up to three (3) consecutive days or seventy-two (72) consecutive hours and with prior written Board approval for such longer period as the Board determines appropriate. Owners and Occupants are prohibited from parking on yard areas, along the roadways of the Condominium, or on any exterior parking space located on the Condominium for any period of time.

Vehicles permitted under this subparagraph may be parked only in garages or other areas authorized in writing by the Board.

Disabled and stored vehicles are prohibited from being parked on the Condominium, except in garages. For purposes hereof, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Condominium without being driven for seven (7) consecutive days or longer without prior written Board permission.

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

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

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's Unit, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

(j) Heating of Units in Colder Months. In order to prevent breakage of water pipes during

colder months of the year resulting in damage to any portion of the Condominium, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" position and at a minimum temperature setting of fifty-five degrees (55°) Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two degrees (32°) Fahrenheit or below. Owners and Occupants of Units shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. The Board of Directors may fine any Owner or Occupant and/or may cause the water service to the violator's Unit to be discontinued for violation of this subparagraph, in addition to any other remedies of the Association.

(k) Signs. Except as may be provided herein or as may be required by legal proceedings, no signs, advertising posters, flyers, political placards or billboards of any kind shall be erected, placed, or permitted to remain on the Condominium without the prior written consent of the Board or its designee, except that: one (1) professional security sign not to exceed twelve (12) inches by twelve (12) inches may be displayed in Units with active security systems; and those Units not visible from Grapevine Circle may display one (1) professionally lettered "For Sale" or "For Rent" sign not to exceed two (2) feet by two (2) feet in size on a location inside the sidewalk and adjacent to the side or front of the Unit being offered for sale or rent. If possible, the professional security sign must be placed within two (2) feet of the column closest to the main door of the Unit, inside the sidewalk. If shrubbery obscures the view of either sign then such sign may be moved the least amount required to be visible. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. The Board may promulgate further regulations governing the placement, size, and types of signs that may be placed or erected in the Condominium.

(l) Rubbish, Trash, and Garbage. No trash receptacle or rubbish, trash, and garbage shall be placed upon the curb adjacent to the Condominium property more than twelve (12) hours before such items are scheduled to be collected or removed from the Condominium. All receptacles shall be removed within twelve (12) hours of the time upon which rubbish, trash, and garbage was scheduled to be collected or removal from the Condominium.

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

(n) Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited unless approved in writing by the Board of Directors.

(o) Garages and Limited Common Element Driveways. It is prohibited for an Owner or Occupant of a Unit that includes a garage to convert such garage to any other use. No Owner or Occupant of a Unit that includes a garage shall park his car or other motor vehicle on any portion of the Condominium, other than in the garage, except that guests of Owners or Occupants may park temporarily on the Limited Common Element driveway as provided in Paragraph 14(i) above. Garage doors shall remain closed at all times, except for necessary use, ingress, and egress. Notwithstanding the foregoing, if the temperature is 85 degrees Fahrenheit or higher, then garage doors may remain open up to a height of eighteen (18) inches above the ground. All garages shall be maintained in such a manner that parking for the maximum number of motor vehicles for which it was originally designed to hold is allowed and possible. If the Board approves the parking of a vehicle on the Limited Common Element driveway as provided above, no vehicles other than cars or passenger vehicles (as defined in subparagraph 14(i) above), excluding pick-up trucks, shall be parked in the Limited Common Element driveway.

(p) Attics. An Owner or Occupant may only use the portion of the attic area in the Unit for storage in which plywood has been installed by Declarant. Any areas in the attic where plywood was not originally installed by Declarant may not be used for storage unless such area is completed as a finished

bonus space by Declarant. No heavy objects should be stored in the attic since the attic area was not designed to support heavy loads

(q) Window Treatments. All windows in Units must have window treatments, except for palladium, sunburst, transom or storage attic windows. The color of all window treatments visible from outside the Unit must be white or off-white. Bed sheets shall not be used as window treatments.

(r) Antennas and Satellite Dishes. Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Condominium, including the Unit or Limited Common Elements; provided, however, the Association shall have the right to erect, construct and maintain such devices. The following shall apply to all Owners:

(i) No transmission antenna, of any kind, may be erected anywhere on the Condominium, including the Units, without written approval of the Board of Directors or the Architectural Control Committee.

(ii) No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one meter in diameter shall be placed, allowed or maintained upon the Condominium, including the Units and the Limited Common Elements.

(iii) DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, both as may be amended from time to time.

In the event of a transfer of the Unit which includes a satellite dish or antenna, the grantee shall assume all responsibility for the satellite dish or antenna and shall comply with this Declaration, the Bylaws and the rules and regulations regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dish or antenna.

(s) Grilling. The use of outdoor grills other than electric grills on any portion of the Condominium buildings shall be governed by applicable state laws and local ordinances having jurisdiction over the Condominium, and any rules and regulations set by the Board.

(t) Abandoned Personal Property. Personal property, other than vehicles as provided for in subparagraph (i) shall not be kept, or allowed to remain for more than twenty-four (24) hours upon any portion of the Common Elements, other than on a Limited Common Element, without prior written permission of the Board of Directors. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property and/or on the front door of the property owner's Unit, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine, at the sole expense of any Owner to whom such personal property belongs, and the Board shall have no obligation to return, replace or reimburse the owner of the property. The notice shall include the name and telephone number of the Person or entity that will remove the property and the name and telephone number of a Person to contact regarding the alleged violation.

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

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

(u) Sale Period. Notwithstanding any provisions contained in this Declaration to the contrary, for

up to twelve (12) months after Declarant has sold one hundred percent (100%) of the Units, it shall be expressly permissible for Declarant, its contractors, agents, employees, assigns and representatives, to maintain and carry on, upon such portion of the Condominium as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the completion and sale of the Units, including, but without limitation, business offices, signs, model Units and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use the parking facilities on the Condominium for such purposes and to use the Units owned by Declarant as model Units and as offices for the sale of the Units and related activities for any purpose for up to twelve (12) months after Declarant has sold one hundred percent (100%) of the Units, including the right to bring guests onto the Condominium for any purpose.

(v) Move In/Move Out. Owner or Occupant shall not move furniture, construction materials, and other over-sized items in or out of the Condominium except during such hours and according to requirements to be determined by the Board of Directors.

(w) Life-Safety Systems. Owners and Occupants shall not tamper with or disengage any portion of the life-safety systems that serve the Condominium, and all fire control devices (such as smoke detectors and call boxes), regardless of whether such items are located within the boundaries of a Unit.

#### 15. LEASING.

In order to protect the equity of the individual Owners in the Condominium, and to carry out the purpose for which the Condominium was formed by preserving the character of the Condominium as a residential community of owner-occupied homes, leasing of Units shall be governed by the restrictions imposed by this Paragraph. **Except as provided herein, leasing of Units is prohibited.** The intent of this provision is to establish a 9-Unit leasing limit at the Condominium, to give Owners a fair opportunity to lease by limiting the duration of leasing permits, to provide certain benefits to grandfathered Owners identified below, and to provide the Board flexibility to allow leasing of Units in certain undue hardship situations.

(a) Definitions.

(i) “Effective Date” means the date that this Amendment is recorded in the Forsyth County, Georgia records.

(ii) “Grandfathered Owner” means an Owner who is the Owner of a grandfathered Unit on the Effective Date. Grandfathered Owners may lease their Grandfathered Units as provided herein. Grandfathered Units shall count toward the 9-Unit leasing limitation hereunder, but the 9-Unit leasing limitation shall not prevent Grandfathered Owners from leasing their Grandfathered Units. Grandfathered Owners shall be obligated to comply with all other provisions of this Paragraph, including but not limited to ensuring that their tenants or Occupants comply with the Declaration, Bylaws and Association regulations. Grandfathering hereunder shall continue only until the earlier of:

(A) the date the Grandfathered Owner conveys title to the Grandfathered Unit to any other person (other than the Owner’s spouse, former spouse, parent, grandparent, child, grandchild, brother or sister);

(B) the date the Grandfathered Owner occupies the Unit as his or her primary residence; or

(C) the date that the Grandfathered Owner becomes delinquent in the payment of any assessments or other charges owed to the Association hereunder.

(iii) “Grandfathered Tenant” means the tenant occupying and leasing a Grandfathered Unit on the Effective Date.

(iv) **“Grandfathered Unit”** means the following five (5) Units: 2565, 2571, 2597, 2653, and 2696 Grapevine Circle.

(v) **“Leasing”** means the occupancy of a Unit by any person(s) other than:

(A) the Unit Owner or a parent, child, brother, sister, grandparent, grandchild, spouse or former spouse of an Owner, which relationship shall be demonstrated to the Board on request by providing a copy of a birth certificate or similar document satisfactory to the Board;

(B) a trustee or beneficiary of an Owner that is a trust, provided the Owner receives no rent or other consideration for such occupancy;

(C) an officer, director, shareholder, member or employee of an Owner that is a corporation; a manager or member of an Owner that is a limited liability company; a partner of an Owner that is a partnership; or a trustee or beneficiary of an Owner that is a trust (collectively “Authorized Corporate Occupant”); provided the Owner receives no rent or other consideration for such occupancy. The name of each Authorized Corporate Occupant shall be designated in writing to the Board and may not be changed more frequently than once every 12 months without the Board’s written consent. A person’s designation as an Authorized Corporate Occupant shall terminate automatically upon the termination of such person's relationship with the entity holding record title to the Unit; or

(D) roommate of any of the above, if the above person occupies the Unit as his or her primary residence.

A Unit may be considered to be leased hereunder even if no rent is paid to the Owner. For the purpose of this provision, any lease purchase arrangements, or lease with an option to purchase, shall be considered a lease as defined hereunder and shall be subject to the provisions hereof.

(b) **Authorized Leasing.** Owners may lease their Units only if: (1) the Owner is a Grandfathered Owner; (2) the Owner is not a Grandfathered Owner but has received a leasing permit from the Board as provided below; (3) the Owner is not a Grandfathered Owner but has received a hardship leasing permit from the Board as provided below; or (4) the Owner or lessee is the Association. Leasing permits and hardship leasing permits are not intended as a way for the Association to approve or disapprove a particular tenant or Occupant, but a method to ensure that all leasing of Units is strictly in compliance with the conditions and requirements specified in this Paragraph. These conditions and requirements are of utmost importance in maintaining the high quality of the Condominium.

(c) **Leasing Permits.** A non-Grandfathered Owner who wishes to lease a Unit may request a Leasing Permit from the Board. Owner requests for leasing permits must be in writing, providing such information as the Board may reasonably require. Grandfathered Owners do not require leasing permits to lease their Units hereunder.

The Board of Directors will approve an Owner’s request for a leasing permit if: (i) the Owner has resided in the Unit for at least 12 consecutive months at any point of time prior to requesting a leasing permit; and (ii) the total number of current, outstanding leasing permits plus Grandfathered Units at such time is less than 9.

Notwithstanding the above, the Board may deny a leasing permit to any Owner or revoke any leasing permit if the Unit is shown on the Association’s books and records to be more than 30 days past due in any assessment or charge, or if the Owner has a documented, unresolved violation of the Declaration, Bylaws, or any Association rules and regulations.

If the total number of current, outstanding leasing permits plus the number of Grandfathered Units is 9 or more, then no additional leasing permits shall be issued (except for hardship leasing permits) until the total number of current, outstanding leasing permits and Grandfathered Units drops below 9.

Owners who have requested and been denied a leasing permit hereunder shall be placed on a waiting list to be issued a leasing permit, if they so desire, when the above conditions have been satisfied. The issuance of a hardship leasing permit to an Owner shall not cause the Owner to be removed from the waiting list for a leasing permit.

(d) **Hardship Leasing Permits.** For a non-Grandfathered Owner, if the failure to lease will result in an undue hardship to the Owner, and the Owner is not eligible for a Leasing Permit, then the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a hardship leasing permit. The Board, in its discretion, may grant hardship leasing permits if the failure to lease will result in a significant undue hardship to the Owner.

The hardship leasing permit will allow an Owner to lease his or her Unit, provided that such leasing is in strict accordance with the terms of the permit and this Paragraph. The Board of Directors shall have the authority to establish conditions as to the terms, duration and use of such permits consistent with this Paragraph. All hardship leasing permits are valid only as to a specific Owner and Unit and are not transferable between either Units or Owners (including a subsequent Owner of a Unit where a permit was issued to the Owner's predecessor in title).

The Board shall have the authority to issue or deny requests for hardship leasing permits in its discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship; (2) the harm, if any, which will result to the Condominium if the permit is approved; (3) the number of hardship leasing permits which have been issued to other Owners; (4) the Owner's ability to cure the hardship; and (5) whether previous hardship leasing permits have been issued to the Owner. The Board has sole discretion whether to grant a hardship leasing permit, and the existence of a hardship does not guaranty that an Owner is entitled to or will receive a hardship leasing permit; such permit is discretionary. The Board shall have broad discretion in determining what constitutes an undue hardship.

If a hardship leasing permit is issued hereunder, the permit shall expire automatically if the Owner does not lease the Unit in compliance with the Permit and this Paragraph within 90 days of the date of issuance of the permit. Hardship leasing permits shall be valid for a term of one year, and shall authorize leasing of the Unit for a term of one year, unless otherwise approved in writing by the Board. Owners may apply for additional hardship leasing permits at the expiration of a hardship leasing permit, if the circumstances so warrant, but the Board is not obligated to renew or reissue any hardship leasing permit.

(e) **Expiration and Revocation of Leasing Permits and Hardship Leasing Permits.** Leasing permits and hardship leasing permits are automatically revoked upon the sale or transfer of the Unit to a third party (excluding sales or transfers to an Owner's spouse, former spouse, parent, grandparent, child, grandchild, brother or sister).

Leasing permits issued to non-Grandfathered Owners also automatically expire: (i) two years from the date issued; or (ii) if the Unit is not subject to an authorized and approved lease for more than 90 consecutive days after the issuance of the permit.

Upon written notice to the Owner, the Board also may revoke any leasing permit or hardship leasing permit if the Owner is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, or if the Owner has a documented, unresolved violation of the Declaration, Bylaws, any Association rules and regulations, or any applicable laws or ordinances. If a leasing permit expires or is revoked, the Owner may request another leasing permit or, if such leasing permit is not available, the Owner may request to be placed on the leasing waiting list.

(f) **Leasing Administration Fee.** In addition to annual assessments, special assessments, and other charges provided for under this Declaration or the Bylaws, every Owner who leases a Unit, including but not limited to Grandfathered Owners, shall be required to pay to the Association a Leasing Administration Fee at the commencement of each lease executed or leasing occupancy created after the Effective Date. The Leasing Administration Fee shall be in an amount established by the Board of Directors annually, not to exceed \$250.00 or such higher amount as may be approved by a majority of the eligible Association members voting in person or by proxy at a duly called meeting, or by ballot in lieu of a meeting as provided in the

Bylaws. The Leasing Administration Fee shall be non-prorated and non-refundable, and shall be due within 30 days of the date each new lease is executed or new occupancy relationship is created hereunder.

(g) **Leasing Provisions.** When leasing is permitted under this Paragraph, it shall be governed by the following provisions:

(i) **General Leasing Provisions.** Except for roommates of an Owner as provided above, Units may be leased only in their entirety pursuant to a single lease. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. There shall be no subleasing of Units or assignment of leases without prior written Board approval. All leases must be for an initial term of one year, except with written Board approval.

At least seven days before entering into a lease of any Unit, the Owner shall provide the Board of Directors with written notice of the Owner's intention to lease his or her Unit and verification that the Owner either has obtained a leasing permit or hardship leasing permit or is authorized to lease as a Grandfathered Owner. The notice shall include: (1) a copy of the proposed lease, which must include the Lease Terms Exhibit attached hereto; (2) the names, phone numbers, email addresses, work locations and work phone numbers of all of the proposed occupants of the Unit; (3) the Owner's Unit address, and the Owner's phone number, email address, work location, work phone number and physical street address to be occupied by the Owner when the Unit is leased; (4) the number and type of all pets to be kept in the Unit and vehicles to be parked at the Unit; (5) confirmation of the Tenant Screening required hereunder; and (6) such other information required by the Board.

The Owner must provide the lessee copies of the Declaration, Bylaws and Association rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed tenant; the Board's approval or disapproval shall be limited to the form of the proposed lease.

The Owner of a leased Unit shall provide the Board with a copy of the executed lease within 10 days after executing a lease for the Unit and within 10 days of request by the Board during the lease term. If any of the information regarding the occupant required above, or other information regarding occupancy of the Unit, changes during the term of any leasing of the Unit, the Owner and Occupant shall update and notify the Board in writing of such changes within 30 days of the date of such change.

The provisions of the Lease Terms Exhibit attached hereto and incorporated herein by reference are incorporated into each lease of any Unit, including but not limited to a Grandfathered Unit, executed, modified, renewed or extended after the Effective Date of this Amendment, whether or not expressly stated therein, and into the terms of any tenancy or occupancy of a Unit even if no written lease or agreement exists between the Owner and the Occupant. If an Owner fails to provide the Association a copy of the lease and notice of leasing as provided herein, or an Owner otherwise leases a Unit in violation of this Paragraph, the Association may fine the Owner an initial fine of up to \$500.00, plus additional daily fines for continued documented, unresolved violation of these provisions, in addition to all other remedies provided in the Declaration, Bylaws or Georgia law.

The Board is not required to allow any person to enter the community unless the person is an Owner or authorized and confirmed Occupant; provided nothing herein shall create any obligation on the Board to monitor, supervise or control access into the community, and the Association, Board and its agents shall have no liability therefor.

(ii) **Tenant Screening.** Any Owner who is seeking to lease his or her Unit must engage a Tenant Screening Service prior to entering into a lease agreement and must provide the Association with a receipt or other written documentation evidencing that the Owner has performed the Tenant Screening required hereunder; provided, however, this subparagraph shall not apply where the tenant is a parent, child or sibling of the Owner. An Owner seeking exemption from Tenant Screening must provide written certification of the relationship to the Board. The Tenant Screening Service must, at a minimum, take the following steps:

(A) Obtain a consumer credit report on the prospective tenant(s);



- (B) Verify the prospective tenant's employment for the last two years;
- (C) Check the prospective tenant's rental history in its database and with all landlords during the last two years, either as reported by the prospective tenant or disclosed by the Service's investigation;
- (D) Check the public records of the State of Georgia for bankruptcy and unlawful detainer actions involving the prospective tenant; and
- (E) Report such information as is disclosed by its investigation to the Unit Owner.

If any of (A) through (E) above is not a part of the screening report, the Owner will separately verify this information and include it with the screening report to Board. The Owner is not required to provide the Board with the results of the Tenant Screening, but the Owner must provide the Board an affidavit confirming compliance with this provision, or in the Board's discretion, a receipt or other documentation evidencing that the Owner has performed the Tenant Screening required hereunder.

**The Board will not evaluate the information or make any determination or recommendation as to the suitability of any prospective tenant. The selection of a suitable and appropriate tenant shall be the sole responsibility of the Unit Owner. The Unit Owner shall treat all information received in accordance with the requirements of the Federal Fair Credit Reporting Act and any other applicable state or federal laws and not disclose the contents of any report to the Association, the prospective tenant or any other person not permitted access to such information provided by the Service.**

(iii) **Tenant or Renter's Insurance.** During all times that a Unit is leased, as provided in this Paragraph, the Occupant or Owner shall purchase and maintain customary renter's insurance, or similar insurance, in amounts sufficient to cover all personal property kept in or brought into the Unit. The Owner or Occupant shall provide the Association with a certificate of such coverage upon request.

(iv) **Compliance.** Each Owner and Occupant shall comply with the Declaration, Bylaws, Association rules and regulations, and all applicable laws and ordinances. Owners and Occupants shall control the conduct of all other occupants and guests of the leased Unit in order to ensure such compliance and shall indemnify and hold the Association harmless for their and their occupants' and guests' failure to comply. The Owner shall cause all Occupants of his or her Unit to comply with the Declaration, Bylaws and Association rules, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants are fully liable and may be sanctioned for any such violation.

Any documented violation of any provision of the Declaration, Bylaws, Association rules or applicable law or ordinance by an Owner, Occupant, or any guest of an Owner or Occupant, shall constitute a default under the lease and authorizes the Association to declare the lease in default and to terminate the lease for any such violation. The Association may bring an action against the Owner and/or Occupant(s) for damages and/or injunctive relief, or may impose fines and/or other sanctions under the Declaration, Bylaws or Georgia law, including all remedies available to a landlord upon breach or default of a lease (including eviction of the occupant(s)), for documented violations of the Declaration, Bylaws, Association rules, applicable laws or ordinances, or the lease.

Failure by the Association to enforce any of its rights shall not be deemed a waiver of the right to do so thereafter. The Owner delegates and assigns to the Association, at the Board's discretion, the power to evict the occupant(s) on behalf of and for the benefit of the Owner. If the Association proceeds to evict the occupant(s), any costs associated therewith, including all attorneys' fees actually incurred and court costs, shall be specially assessed against Owner's Unit and shall be a personal obligation of the Owner, being deemed as an expense which benefits the leased Unit and Owner. If any occupant, or any guest, invitee, licensee or family member of the occupant violates the Declaration, Bylaws or rules and regulations, for which a fine is imposed, such fine may be assessed against the occupant and/or Owner, as provided in the Declaration and Bylaws.

(h) **Applicability of this Paragraph.** Notwithstanding the above, this Paragraph shall not apply to any leasing transaction entered into by the Association.

16. **TRANSFER OR SALE OF UNITS.**

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

In addition, a non-refundable contribution to the working capital fund of the Association shall be paid to the Association by the purchaser of a Unit at the closing of each sale or resale of a Unit in the amount of two (2) months of the general assessment charges to such Unit in accordance with subparagraph 10(i) hereof.

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

17. **MAINTENANCE RESPONSIBILITY.**

(a) **By the Owner.** Each Owner shall have the obligation to maintain and keep in good repair all portions of his Unit and all improvements made by the Owner to the Limited Common Elements assigned to the Unit except any portion of a Unit which is expressly made the maintenance obligation of the Association as set forth in subparagraph (b) below. This maintenance responsibility shall include, but not be limited to the following: all glass surfaces (including exterior cleaning), windows, window frames, casings and locks (including caulking of windows); all doors, 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 and the fan coil serving the Unit; and all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether located within or without a Unit's boundaries (including all electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits, or other apparatus serving only the Unit).

In addition, each Owner shall have the responsibility:

- (i) to keep in a neat, clean and sanitary condition any Limited Common Elements serving his Unit;
- (ii) to perform his 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; and
- (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 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 and keep in good repair as a Common Expense the "Area of Common Responsibility," which includes the following:

(i) all Common Elements, including any Limited Common Elements, but excluding all improvements made to such Limited Common Elements; provided, however, the cost of maintenance and repair of Limited Common Elements may be assessed against the Owner to whom the Limited Common Element is assigned under subparagraph 8(b)(i);

(ii) all portions of the roofs and the roofs support systems, including the roofs joists and cross braces, even if such roofs joists and cross braces are located within a Unit;

(iii) all skylights, the cost of which may be assessed against the Owner of the Unit in which the skylight is located, pursuant to Paragraph 8(b)(i);

(iv) periodic painting, staining and/or cleaning of exterior surfaces of the Condominium buildings, on a schedule to be determined by the Board of Directors;

(v) life safety and building systems; and

(vi) all Limited Common Element chimneys and chimney caps the cost of which may be assessed against the Owner of the Unit to which the chimney and fireplace flue are attached, pursuant to subparagraph 8(b)(i).

Additionally, the Association shall have the right, but not the obligation, to conduct a periodic inspection, on a schedule to be determined by the Board of Directors, of all fireplaces and chimney flues and, if, in the Board of Director's sole discretion, a flue needs to be cleaned and/or repaired, the Association shall provide such cleaning and/or repair (even though the flues are considered a portion of the Unit) and the cost of such periodic inspection, cleaning and/or repair may be assessed against the Owner of the Unit served by such flue pursuant to Paragraph 8(b)(i).

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 repair incidental damage to any Unit resulting from performance of work that is the responsibility of the Association. As finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready". Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the 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.

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, except for injuries or damages arising after the Owner of a Unit has put the Association on notice of a specific leak or flow from any portion of the Common Elements and the Association has failed to exercise due care to correct the leak or flow within a reasonable time thereafter. 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.

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

Unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete 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 or Occupant's Unit, shall become a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

(d) Measures Related to Insurance Coverage.

(i) The Board of Directors, upon resolution, shall have the authority to require all or any Owner(s) to do any act or perform any work involving portions of the Condominium which are the maintenance responsibility of the 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 Owners to install and maintain smoke detectors, requiring Owners to certify that they have checked the batteries for their smoke detectors, requiring Owners to allow the Association to inspect the smoke detectors and replace batteries if needed on a schedule to be determined by the Board of Directors, requiring Owners to make improvements to the Owner's Unit, and such other measures as the Board may reasonably require so long as the cost of such work does not exceed Three Hundred Dollars (\$300) per Unit in any twelve (12) month period.

(ii) In addition to, and not in limitation of, any other rights the Association may have, if any Owner does not comply with any requirement made by the Board of Directors pursuant to subparagraph (d)(i) above, the Association, upon fifteen (15) days' written notice (during which period the Owner may perform the required act or work without further liability), may perform such required act or work at the Owner's sole cost. Such cost shall be an assessment and a lien against the Unit as provided herein. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to subparagraph (d)(i) of this Paragraph, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency

situation.

(e) Mold and/or Mildew. Mold and/or mildew can grow in any portion of the Condominium that is exposed to elevated levels of moisture. The Association and each Owner agree to: (i) regularly inspect the parts of the Condominium that they respectively maintain, and which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew, and/or water intrusion (except when the water intrusion is part of the normal functioning of improvements and appliances such as showers, sinks, dishwashers, and other similar appliances and improvements) and/or damage; (ii) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Condominium that they respectively maintain; (iii) remediate or replace any building material located in the parts of the Condominium that they respectively maintain that has absorbed water or moisture as a result of water intrusion; and (iv) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Condominium that they respectively maintain in accordance with current industry-accepted methods. In addition, the Association agrees to notify the Owners, and each Owner agrees to notify the Association of the discovery of mold, mildew, and/or water intrusion and/or damage in the parts of the Condominium that they respectively maintain. Each Owner further agrees not to block or cover any of the heating, ventilation or air-conditioning ducts located in the Unit.

Notwithstanding anything to the contrary herein, Declarant shall have no obligation to perform any invasive testing or inspections, maintenance or repairs in accordance with this subparagraph 17(e), and shall not be held liable for any loss or damage caused by the failure of the Association or an Owner to perform their obligations herein.

#### 18. MORTGAGEE'S RIGHTS.

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

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

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

(b) Where the Mortgagee holding a first Mortgage of record, a secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the secondary purchase money Mortgage is the seller of the Unit) or other purchaser of a Unit obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable, nor shall the Unit be subject to a lien, for the share of the Common Expenses or assessments by the Association chargeable to such Unit 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, and 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 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 that would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

(d) Upon written request to the Association, identifying the name and address of the holder and the Unit number or address, any Eligible Mortgage Holder, or insurer or guarantor of a first mortgage on a Unit, will be entitled to timely written notice of:

(i) any proposed amendment of the Condominium Instruments effecting a change in (a) the boundaries of any Unit or the exclusive easement rights appertaining thereto; (b) the interests in the Common Elements or Limited Common Elements appertaining to any Unit or the liability for Common Expenses appertaining thereto; (c) the number of votes in the Association appertaining to any Unit; or (d) the purposes to which any Unit or the Common Elements are restricted;

(ii) any proposed termination of the Condominium;

(iii) any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a first Mortgage held by such Eligible Mortgage Holder;

(iv) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Owner of any other obligation under the Condominium Instruments which is not cured within sixty (60) days;

(v) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(vi) any proposed action that would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

(e) Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

(f) Notwithstanding anything to the contrary herein contained, the provisions of Paragraphs 15 and 16 governing leasing and sales of units, respectively, shall not apply to impair the right of any first Mortgagee to:

(i) foreclose or take title to a Unit pursuant to remedies contained in its Mortgage; or

(ii) take a deed or assignment in lieu of foreclosure; or

(iii) sell, lease, or otherwise dispose of a Unit acquired by the Mortgagee.

(g) No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

(h) Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of any mortgagee encumbering such Owner's Unit.

(i) Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

(j) Construction of this Paragraph. Nothing contained in this Paragraph shall be construed to reduce the percentage vote that must otherwise be obtained under the Condominium Instruments or Georgia law for any of the actions set forth in this Paragraph.

#### 19. GENERAL PROVISIONS.

SECURITY. THE ASSOCIATION OR DECLARANT MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SECURITY ON THE CONDOMINIUM; HOWEVER, EACH OWNER, FOR HIMSELF AND HIS TENANTS, GUESTS, LICENSEES, AND INVITEES, ACKNOWLEDGES AND AGREES THAT NEITHER THE ASSOCIATION NOR DECLARANT IS A PROVIDER OF SECURITY AND NEITHER PARTY SHALL HAVE A DUTY TO PROVIDE SECURITY ON THE CONDOMINIUM. FURTHERMORE, THE ASSOCIATION DOES NOT GUARANTEE THAT NON-OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE CONDOMINIUM AND COMMIT CRIMINAL ACTS ON THE CONDOMINIUM NOR DOES THE ASSOCIATION GUARANTEE THAT CRIMINAL ACTS ON THE CONDOMINIUM WILL NOT BE COMMITTED BY OTHER OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS PERSON AND PROPERTY AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH OWNER. NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF MEASURES UNDERTAKEN.

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

(c) Garages and Vehicles. Neither Declarant nor the Association shall be held liable for any loss or damage arising from theft, vandalism, malicious mischief, or any loss or damage to any property placed or kept in any garage in the Condominium. Each Owner or Occupant with use of a garage who places or keeps a vehicle and/or any personal property in the vehicle or garage does so at his own risk.

(d) Unit Keys. At the request of the Association, each Owner, by acceptance of a deed to a

Unit, agrees to provide the Association with a key to the Unit (and the security alarm code, if any) to be used by the Association for maintenance, emergency, security or safety purposes as provided in subparagraph 9(a) of this Declaration (and for pest control, if necessary, as provided in subparagraph 21(e) of this Declaration). Neither Declarant nor the Association shall be liable for any loss or damage due to its holding such key, or use of such key for the purposes described above and each Owner shall indemnify and hold harmless Declarant, the Association and its officers and directors against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon Declarant, the Association or its officers or directors in connection with any action, suit, or other proceeding (including settlement of any such action, suit or proceeding) brought by the Owner or the Owner's family, tenants, guests, employees, invitees, or licensees against Declarant, the Association, its officers or directors arising out of or relating to its holding or use of such key for the purposes described above.

(e) Right of Action. All Owners hereby acknowledge and agree that the Association shall not be entitled to institute any legal action against anyone on behalf of any or all of the Owners which is based on any alleged construction defect (as such term is defined in O.C.G.A. § 8-2-36) in any Unit, the Common Elements or the Limited Common Elements, or any damage allegedly sustained by any Owner by reason thereof, except the Association may bring an action against a Contractor to recover damages resulting from construction defects in any of the Common Elements or Limited Common Elements. Such action may be maintained only after:

(i) The Association first obtains the written approval of each Owner whose interest in the Common Elements or Limited Common Elements will be the subject of the action;

(ii) A vote or written agreement of the Owners to which at least a majority of the votes of the members of the Association are allocated;

(iii) The Board and the Contractor have met in Person and conferred in a good faith attempt to resolve the Association's claim or Contractor has definitively declined or ignored the requests to meet with the Board; and

(iv) The Association has otherwise satisfied all of the pre-action requirements for a claimant to commence an action as set forth in O.C.G.A. § 8-2-35, et seq.

Notwithstanding the above, after expiration of the Declarant Control Period, the Board of Directors may negotiate the resolution of any alleged defect(s) in the Common Elements or Limited Common Elements on behalf of the Owners and shall have the right and authority to settle and release on behalf of any and all of the Owners claims, causes of action, damages and suits involving the same. Any such settlement and release shall bind all Owners and their successors and assigns. As set forth in Paragraph 22 hereof, no amendment to this Declaration shall (i) modify, alter, or delete any provision of this Declaration that benefits the Declarant or any rights, privileges, easements, protections, or defenses of the Declarant; or (ii) alter the rights of the Owners or the Association in relationship to the Declarant, without the written consent of the Declarant attached to and recorded with such amendment.

(f) Successor Declarants. Any successor to Declarant shall not be responsible or subject to liability by operation of law or through the purchase of Declarant's interest in the Condominium or any portion thereof at foreclosure or otherwise for any act, omission, or matter occurring or arising from any act, omission, or matter occurring prior to the time the successor succeeded to the interest of Declarant.

(g) Disclosures. Each Owner and Occupant acknowledge the following:

(i) The Condominium is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

(ii) The natural light available to and views from an Owner's Unit may change over time due to, among other circumstances, additional development and the removal or addition of



landscaping.

(iii) No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.

(iv) No representations are made regarding the schools that currently or may in the future serve the Unit.

(v) No representations are made regarding services that may now or in the future serve and support the Unit, including, but not limited to fire protection, police protection, hospitals, physicians, dentists, shopping facilities, mail service and public transportation.

(vi) Since in every community, there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of the Condominium that an Owner or Occupant may find objectionable and that it shall be the sole responsibility of the Owners and Occupants to become acquainted with community conditions that could affect the Unit.

(vii) The Floor Plans and the dimensions and square footage calculations shown thereon are only approximations. Any Owner who is concerned about any representations regarding the Floor Plans should do his own investigation as to the dimensions, measurements and square footage of his Unit.

(viii) Declarant may be constructing portions of the Condominium and engaging in other construction activities related to the construction of Common Elements and additional phases of the Condominium. Such construction activities may, from time to time, produce certain conditions on the Condominium, including, without limitation: (A) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (B) smoke; (C) noxious, toxic, or corrosive fumes or gases; (D) obnoxious odors; (E) dust, dirt or flying ash; (F) unusual fire or explosion hazards; (G) temporary interruption of utilities; and/or (H) other conditions that may threaten the security or safety of Persons on the Condominium. Notwithstanding the foregoing, all Owners and Occupants agree that such conditions on the Condominium resulting from renovation and construction activities shall not be deemed a nuisance and shall not cause Declarant and its agents to be deemed in violation of any provision of the Declaration.

(ix) Exposed concrete surfaces in portions of the Condominium which are not heated and cooled are subject to cracking due to (A) water penetration, (B) expansion and contraction of the concrete with temperature changes, and (C) building settlement.

(x) Concrete surfaces in heated and cooled portions of the Condominium are subject to cracking due to building settlement.

(xi) Plumbing and concrete, tile and hardwood surfaces within a Unit may transmit noise, and such noise shall not constitute a use of a Unit that interferes with or causes disruption to the use and quiet enjoyment of another Unit by its respective Owner and/or Occupant.

(xii) No representations are made that any room, wall, ceiling or floor in any dwelling on the Unit or any pipes located therein is or will be soundproof or that sound may not be transmitted from one Unit to another. Sound transmission between Units is inherent in multi-family construction and is not a warrantable condition. No representations are made that the Unit is or will be soundproof or that sound may not be transmitted from one Unit to another.

(xiii) A Unit may trap humidity created by everyday living (cooking, bathing, laundering etc.). As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Owners and Occupants, the condensation may increase resulting in staining, damage

to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold (see subparagraph 17(e) herein).

(xiv) Portions of the Condominium may not be landscaped and may be allowed to return to its natural state.

(xv) While the drainage system for surface water runoff on the Condominium will be constructed in accordance with applicable governmental standards, the Condominium may still be subject to erosion and/or flooding during unusually intense or prolonged periods of rain.

(xvi) Ponding of water may occur on sidewalks, driveways, patios, and other flat surfaces.

(xvii) Certain materials used for fixtures in a Unit (including, but not limited to, brass/chrome plumbing fixtures, brass/chrome bathroom accessories and brass/chrome light fixtures) are subject to discoloration and/or corrosion over time.

(xviii) No representations are made that the systems in the Unit including, by way of example only, heating and air conditioning and electrical systems will operate or perform at a level or standard greater than the minimum specifications of the manufacturer.

(xix) Since trees and landscaping existing on the Condominium prior to the commencement of construction thereon may be adversely affected or even killed by construction activities, Declarant shall have no responsibility for the same.

(xx) To the extent provided by Declarant, any enclosed sunroom may experience a temperature and/or humidity variance from the remaining structure.

(xxi) Wood contains moisture which dries over time; as wood in the home dries it may naturally shrink, crack and warp causing, among other things, sheetrock tears, nail pops, cracks in baseboards and warping of doors; and if any of the above occurs, it is part of the normal aging of the home and not a construction defect.

(xxii) Natural wood has considerable color variation due to its organic nature. There may be shades of white, red, black or even green in areas. In addition, mineral streaks may also be visible. Grain pattern or texture will vary from consistent to completely irregular; wood from different areas of the same tree can also have variations in pattern or texture. It is these variations that give wood its aesthetic quality. These variations in grain will in turn accept stain in varying amounts, which will show throughout the wood products from one door to the next, one panel to the next or one piece of wood to the next. Also, cabinet finishes (including gloss and/or matte finishes) will not be entirely consistent and some minor irregularities will be apparent. All Owners agree to accept these conditions if any of the same are present in the wood in the home and agree that the same are not defects.

(xxiii) Marble and granite are natural pieces of stone. Marble and granite veins and colors may vary drastically from piece to piece and are all different. Marble and granite also have chips and shattering veins which look like scratches. The thickness of the joints between marble, granite or other materials against which they have been laid will vary and there will be irregularities in surface smoothness. Marble and other stone finishes may be dangerously slippery and Declarant assumes no responsibility for injuries sustained as a result of exposure to or use of such materials. Periodic use of professionally approved and applied sealant is needed to ensure proper maintenance of the marble and granite, and it is the Owner or Occupant's responsibility to properly maintain these materials. Marble, granite and other stone surfaces may scratch, chip or stain easily. Such movement may in turn cause grout to crack or loosen or cause some cracking in the stone flooring which may need to be repaired as part of normal home maintenance.

(xxiv) Radon is a naturally occurring radioactive gas that, when it has accumulated in sufficient quantities, may over time present health risks to persons who are exposed to it, and radon

may be present in the Unit being purchased by the Owner. Owner can periodically test the Unit constructed on the Condominium for radon gas, and, if desired by Owner, install at Owner's sole expense automatic ventilation fans to prevent the build-up of radon gas levels.

(xxv) Any advertising materials, brochures, renderings, drawings, and the like, furnished by Declarant to Owner which purport to depict the Unit to be constructed or any portion thereof, are merely approximations and do not necessarily reflect the actual as-built conditions of the same. Due to the unique nature of the construction process and site conditions, room dimensions, size and elevations may vary from unit to unit. Declarant makes no representation as to the location of mailboxes, utility boxes, street lights, fire hydrants or storm drain inlets or basins. Owner further acknowledges and agrees that the decorations, furniture, furnishings, wallpaper, appliances, fixtures, floor coverings and window treatments, landscaping, displays and promotional materials, and the like, contained in any model unit are for marketing and demonstrative purposes only.

(xxvi) The colors of brick and shingles and the efflorescence of same may change over time.

(h) Services During Declarant Control. Each Owner acknowledges that Declarant and its affiliates may provide services utilized by communities such as this Condominium including, but not limited to, management services. Each Owner consents and agrees that the Association may enter into service contracts with Declarant and its affiliates.

(i) Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

## 20. EMINENT DOMAIN.

In the event of a taking by condemnation or by eminent domain, the provisions of the Act shall prevail and govern; provided, however, any proceeds received 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 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 Owner in the distribution of proceeds to such Unit.

## 21. EASEMENTS.

(a) Use and Enjoyment. Each Owner and Occupant shall have a right and a non-exclusive easement of use and enjoyment in and to the Common Elements (including the right of access, ingress and egress to and from his Unit over those portions of the Condominium designated for such purpose), and such non-exclusive easement shall be appurtenant to and shall pass with the title to such Unit, subject to (i) the rights of the Owners to the exclusive use of the Limited Common Elements assigned to their respective Units; (ii) to the right of the Association to control the use and enjoyment of the Common Elements as provided by the terms of this Declaration including, but not limited to, the right of the Association to suspend voting and use privileges as provided herein and the right of the Association to suspend the right of an Owner or Occupant to use the Common Element as provided herein; (iii) the right of the Association to impose reasonable limitations on the number of guests of Owners; (iv) the lawful rights of other Persons; (v) the right of the Association to grant easements, permit and licenses as provided herein; and (vi) the right of the Association to have access to the Units and Limited Common Elements assigned to a Unit to discharge its rights and obligations, under the Condominium Instruments, including without limitation, the maintenance responsibility of the Association.

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

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

(d) Utilities. To the extent that the utility line, pipe, wire, or conduit serving any Unit, Units or the Common Elements shall lie wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit, Units, or the Common Elements shall be burdened with a non-exclusive easement for the use, maintenance, repair and replacement of such utility line, pipe, wire or conduit, such non-exclusive easement to be in favor of the Unit, Units, or Common Elements served by the same and the Association. It shall be the obligation of the benefited Owner to maintain, replace and repair any pipe, line, conduit, duct or wire owned by such Owner, even if such pipe, line conduit, duct or wire is located within the boundaries of a Unit of another Owner. In such circumstance, the benefited Owner shall repair all incidental damage to any Unit resulting from performance of any such work. All Owners hereby covenant and agree that as finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready". Components that may require repair or replacement, such as tile and trim, will be reinstalled only to the extent of readily available materials or similar materials (trim and such will also be finished to "paint-ready"). Due to the uncontrollability of quality of repair, items such as faux paint treatment, wallpaper, ceiling/wall applique, and any other similar types of finishes, will not be the responsibility of the benefited Owner.

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

(f) Community Bulletin Board. As part of the Common Elements maintained by the Association, Declarant and/or the Board shall have the right, but not the obligation, to erect on the Condominium a bulletin board primarily for the use of Owners in advertising their Units for sale. For so long as the Association desires to maintain this bulletin board, each 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.

(g) Declarant Easements. For so long as Declarant owns any Unit primarily for the purpose of sale, Declarant and its duly authorized contractors, subcontractors, representatives, agents, associates, employees, tenants and successors and assigns shall have: (i) a non-exclusive easement for access and ingress to, egress from and use of the Common Elements for the placement and maintenance of signs, banners, balloons, decorations marketing materials and tables, a sales office, a leasing office, a business office, promotional facilities and model Units on any portion of the Condominium, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development, sale or lease of any Unit; (ii) a non-exclusive easement to use the Common Elements for special events and promotional activities; and (iii) a transferable, non-exclusive easement on, over, through, under and across the Common Elements and Limited Common Elements for the purpose of making improvements on the Condominium or any portion thereof, for the purpose of constructing, installing, replacing, repairing, restoring and maintaining all utilities, buildings, driveways, landscaping and any other improvements on the Condominium property or serving the

Condominium, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

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

(h) Association Easements.

(i) The Association, its directors, officers, agents, and employees (including, but not limited to, any manager employed by the Association) shall have a right and a non-exclusive easement to enter upon any portion of the Condominium in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the Owners directly affected thereby.

(ii) The Association, through its Board of Directors, shall have the right, privilege, power and authority to grant permits, licenses, easements and restrictions upon, over, across, above and under the Common Elements for utilities, drainage, access, roads, slopes and other purposes reasonably necessary or useful for the proper maintenance, ongoing development or operation of the Condominium.

(i) Easements in Favor of Additional Property Owner. There is reserved to Declarant and its successors and assigns, including any purchaser of the Additional Property, a non-exclusive easement upon, across, above and under all property within the Condominium (including the Common Elements and Limited Common Elements) for purposes of developing the Additional Property whether or not it is developed as part of the Condominium. In accordance therewith and until such time as Declarant or its successors record an amendment to the Declaration effecting the submission of the Additional Property (which is not required), then it shall be expressly permissible for Declarant and its successors and assigns to maintain and carry on, upon such portion of the Condominium as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient or incidental to Declarant's development, construction and sales activities related to developing the additional Property whether or not it is developed as part of the Condominium including, but without limitation, the following:

(i) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Condominium;

(ii) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Condominium;

(iii) the right to construct and maintain slopes and berms and for drainage and discharge of surface water from the Additional Property onto and across the Condominium, excepting Units thereon, provided that such drainage and discharge shall not materially damage or effect the Condominium or any improvements from time to time located thereon;

(iv) the right to pave such portions of the Common Elements as are necessary in order to connect those portions of said Common Elements which are paved with such roads, roadways, streets and drives as may be constructed in the future on the Additional Property; and

(v) the right to carry on sales and promotional activities in the community and the right to construct and operate business offices, signs, design centers, construction trailers or offices, residences, model Units, and sales offices. Declarant may use residences, offices or other Units

owned or used by Declarant as model Units and sales offices.

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

(j) Easement and Use Rights Granted by Declarant. For so long as Declarant has an option unilaterally to subject Additional Property to this Declaration as provided in Paragraph 25, Declarant shall have an easement and the right to grant to Persons who are not members of the Association, but who are residents of the Additional Property, the right to use the Common Elements, including, without limitation, recreational facilities. The extent and duration of such use shall be determined solely by Declarant.

Declarant hereby expressly reserves unto itself, its successors and assigns, a non-exclusive, perpetual right, privilege and easement with respect to the Condominium for the benefit of Declarant, its successors, assigns and the above-discussed nonmember users, over, under, in and/or on the Condominium (including, without limitation, the above-described recreational facilities), without obligation and without charge, for the purposes of taking all actions related to or connected with the granting of nonmember use and the use by such nonmembers as described above. The right, privilege and easement shall include, without limitation, the right of access, ingress, use and egress of and to the above-described recreational facilities and the right of access, ingress, use and egress for vehicular and pedestrian traffic over, under, on or in the Condominium roads, parking areas and walkways.

## 22. AMENDMENTS.

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

Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the president and secretary of the Association and recorded in the Forsyth 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 percent (51%) of the votes of Units that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested. Material amendments are those that establish, provide for, govern or regulate any of the following:

- (A) Voting;

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

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

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

23. SEVERABILITY.

Invalidation of any one of 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.

24. DECLARANT RIGHTS.

Notwithstanding anything to the contrary herein, and in addition to Declarant's right to appoint and remove officers and directors under Article III, Part A, Section 2 of the Bylaws and other rights set forth herein, Declarant shall have the right, so long as Declarant has the right to subject the Additional Property to this Declaration or for up to twelve (12) months after Declarant conveys one hundred percent (100%) of the Units, whichever is longer, to conduct such sales, marketing, leasing, administrative and other activities at the Condominium as Declarant deems appropriate for the sale, marketing or leasing of any Unit, or for any other purpose, and Declarant shall have a non-exclusive easement right across the Common Elements to erect signs, banners, balloons and other decorations and to conduct such other sales, marketing and leasing activities as provided herein. The expiration of the Declarant Control Period shall not terminate or alter the

status of the above-referenced entity and its respective successors and assigns as Declarant hereunder or divest Declarant of other rights specifically reserved to Declarant herein.

25. EXPANSION OF THE CONDOMINIUM.

Declarant reserves the option to expand the Condominium by adding to the Condominium all or any part of the Additional Property on one (1) or more occasions. Except for zoning and other governmental requirements, there are no limitations as to the location of improvements on the Additional Property. The Additional Property may be added as a whole at one time or portions may be added at different times. There are no limitations fixing the boundaries of any portion of the Additional Property that may be submitted to the Declaration, and there are no limitations regulating the order in which portions of the Additional Property may be submitted to this Declaration. This option shall expire seven (7) years from the date of recording of this Declaration; provided, however, Owners of Units to which two-thirds (2/3) of the Total Association Vote, excluding any votes appurtenant to any Unit or Units then owned by Declarant, may consent to the extension of this expansion option within one (1) year prior to the date upon which the option would have otherwise expired. The maximum number of Units that may be created on the Additional Property and added to the Condominium is seventy-six (76). The maximum average number of Units per acre that may be created on any portion of property added to the Condominium is six (6). No assurances are made that any improvements will be made on all or any of the Additional Property that may be submitted to the Declaration. The Additional Property shall not necessarily be restricted exclusively to residential use, but shall be subject only to uses allowed by applicable zoning ordinances. No assurances are made that the units which may be built on all or any portion of the Additional Property will be substantially identical to the Units on the submitted property in any way whatsoever, including but not limited to the quality of construction, the principal materials to be used in such construction and architectural style. All improvements to be located on each portion of the Additional Property that is being submitted to the Condominium shall be substantially complete prior to its submission to the Condominium. Declarant shall have the right to assign Limited Common Elements on the Additional Property, which may include Limited Common Elements different from those assigned in this Declaration and there shall be no limitations on the right to assign Limited Common Elements on the Additional Property. In addition, in the event that the Additional Property is added to the Condominium, Declarant shall have the right, but not the obligation, to assign portions of the existing Common Elements as Limited Common Elements to some or all of the Units existing as of the date of recording of this Declaration. The undivided interests in the Common Elements are allocated among the Units on the submitted property on an equal basis, and, upon the expansion of the Condominium to include any portion of the Additional Property, shall be reallocated among the Units on the submitted property and the Additional Property on the same basis. Any expansion under this Paragraph shall be effected by Declarant's unilaterally executing and recording the amendments to this Declaration, the plats and the plans required by the Act, and to reflect any differences in the subsequent phase or phases as contemplated by this Paragraph, at Declarant's sole expense. The Units thereby created and added shall be owned by Declarant, but the Common Elements shall be owned by all of the Owners.

26. PREPARER.

This Declaration was prepared by Seth G. Weissman, Weissman, Nowack, Curry & Wilco, P.C., One Alliance Center, 4th Floor, 3500 Lenox Road, Atlanta, Georgia 30326.

[SIGNATURES ON FOLLOWING PAGE]



IN WITNESS WHEREOF, Declarant has executed this Declaration under seal this 22<sup>nd</sup> day of August, 2006

**DECLARANT:**            **THE ORCHARDS OF HABERSHAM GROVE, LLLP**, a Georgia limited liability limited partnership

By: Habersham Grove, LLC,  
a Georgia limited liability company  
Its: General Partner

By: \_\_\_\_\_ (SEAL)  
Name: Charles V. Welden, III  
Title: Manager

Signed, sealed, and delivered  
this 22<sup>nd</sup> day of August, 2006  
in the presence of:

August Z. Wenderon  
Witness

Clayton Woody  
Notary Public            1-2-10



**EXHIBIT "A"**

**Description Of Submitted Property**

All that tract or parcel of land lying and being in Land Lot 293 of the 2<sup>nd</sup> District, 1<sup>st</sup> Section of Forsyth County, Georgia and being more particularly described as follows:

Commencing at the intersection of Land Lots 293, 294 and the southerly right-of-way line of Nuckolls Road having a right-of-way width of 60 feet; said point being the **Point of Beginning**; thence continuing along said right-of-way line South 83°06'04" East, a distance of 97.48 feet to a point; thence continuing along said right-of-way line South 80°42'55" East, a distance of 113.39 feet to a point; thence continuing along said right-of-way line South 80°06'42" East, a distance of 208.24 feet to a point; thence continuing along said right-of-way line South 80°33'36" East, a distance of 92.33 feet to a point; thence continuing along said right-o-way line along a curve whose long chord bears South 79°19'05" East for a distance of 138.63 feet, having a radius of 7317.57 to a point; thence continuing along said right-of-way line South 78°41'35" East, a distance of 65.56 feet to a point; said point being the **TRUE POINT OF BEGINNING**; thence leaving said right-of-way line South 10°56'05" West, a distance of 182.65 feet to a point; thence North 80°07'37" West, a distance of 131.76 feet to a point; thence South 10°56'05" West, a distance of 202.90 feet to a point; thence South 79°05'36" East, a distance of 359.06 feet to a point; thence North 15°59'53" East, a distance of 67.03 feet to a point; thence North 34°00'53" East, a distance of 35.14 feet to a point; thence North 32°03'39" East, a distance of 39.40 feet to a point; thence North 04°04'22" West, a distance of 37.72 feet to a point; thence North 11°44'03" West, a distance of 31.39 feet to a point; thence North 05°35'23" East, a distance of 72.00 feet to a point; thence North 12°05'01" East, a distance of 27.58 feet to a point; thence North 07°12'07" East, a distance of 29.84 feet to a point; thence North 29°40'59" East, a distance of 25.33 feet to a point; thence North 09°26'45" East, a distance of 32.99 feet to a point on the southerly right-of-way line of Nuckolls Road having a right-of-way width of 60 feet; thence continuing along said right-of-way line along a curve whose chord length bears North 79°10'32" West for a distance of 117.95 feet, having a radius of 7005.50 to a point; thence North 78°41'35" West, a distance of 120.43 feet to a point; said point being the **TRUE POINT OF BEGINNING**.

The said tract having a total of 2.745 acres (119591.50 square feet) more or less. The above legal description was completed by AEC, Inc., dated December 22, 2005 and is based upon a survey by Floyd & Associates, Inc., dated September 9, 2004.

## EXHIBIT "B"

### Description of Additional Property

All that tract or parcel of land lying and being in Land Lots 293 & 294 of the 2<sup>nd</sup> District, 1<sup>st</sup> Section of Forsyth County, Georgia and being more particularly described as follows:

Commencing at the intersection of Land Lots 293, 294, 355 & 356, said point being the **Point of Beginning**; thence North 23°08'37" West, a distance of 108.58 feet to a point; thence North 27°29'00" West, a distance of 16.42 feet to a point; thence North 06°40'56" West, a distance of 41.83 feet to a point; thence North 13°51'29" East, a distance of 38.75 feet to a point; thence North 04°58'08" West, a distance of 72.90 feet to a point; thence North 27°11'42" West, a distance of 105.33 feet to a point; thence North 17°40'071" West, a distance of 48.89 feet to a point; thence North 24°27'35" East, a distance of 73.42 feet to a point; thence North 19°51'44" East, a distance of 59.70 feet to a point; thence North 02°45'39" East, a distance of 46.32 feet to a point; thence North 12°12'07" East, a distance of 38.32 feet to a point; thence North 10°14'57" East, a distance of 22.81 feet to a point; thence North 26°50'22" East, a distance of 22.36 feet to a point; thence North 21°41'30" East, a distance of 38.12 feet to a point; thence North 22°56'05" East, a distance of 53.01 feet to a point; thence North 05°59'26" West, a distance of 16.45 feet to a point; thence North 11°30'51" East, a distance of 40.15 feet to a point; thence North 02°35'49" East, a distance of 2.31 feet to a point; said point being along the southerly right-of-way line of Nuckolls Road having a right-of-way width of 60 feet; thence continuing along said right-of-way line North 04°50'49" West, a distance of 18.54 feet to a point; thence continuing along said right-of-way line along a curve whose long chord bears South 82°58'26" East for a distance of 200.07 feet, having a radius of 2537.45 to a point; thence continuing along said right-of-way line South 83°06'04" East, a distance of 97.48 feet to a point; thence continuing along said right-of-way line South 80°42'55" East, a distance of 113.39 feet to a point; thence continuing along said right-of-way line South 80°06'42" East, a distance of 208.24 feet to a point; thence continuing along said right-of-way line South 80°33'36" East, a distance of 92.33 feet to a point; thence continuing along said right-of-way line along a curve whose long chord bears South 79°19'05" East for a distance of 138.63 feet, having a radius of 7317.57 to a point; thence continuing along said right-of-way line South 78°41'35" East, a distance of 65.56 feet to a point; thence leaving said right-of-way line South 10°56'05" West, a distance of 182.65 feet to a point; thence North 80°07'37" West, a distance of 131.76 feet to a point; thence South 10°56'05" West, a distance of 202.90 feet to a point; thence South 79°05'36" East, a distance of 359.06 feet to a point; thence South 19°36'14" West, a distance of 83.03 feet to a point; thence South 44°33'25" West, a distance of 88.39 feet to a point; thence South 25°40'24" West, a distance of 31.35 feet to a point; thence South 44°33'25" West, a distance of 88.39 feet to a point; thence South 11°41'09" West, a distance of 10.21 feet to a point; thence South 22°28'57" West, a distance of 21.05 feet to a point; thence South 39°12'14" West, a distance of 11.05 feet to a point; thence South 59°57'13" West, a distance of 33.12 feet to a point; thence South 56°44'13" West, a distance of 17.59 feet to a point; thence South 49°37'45" West, a distance of 14.30 feet to a point; thence South 89°47'02" West, a distance of 145.76 feet to a point; thence South 89°43'10" West, a distance of 274.96 feet to a point; thence South 89°59'47" West, a distance of 218.23 feet to a point; thence South 89°18'49" West, a distance of 80.76 feet to a point; said point being the **Point of Beginning**.

The said tract having a total of 14.09 acres (613546.0 square feet) more or less. The above legal description was completed by AEC, Inc., dated December 23, 2005 and is based upon a survey by Floyd & Associates, Inc., dated September 9, 2004.