

Clock#: 208408
FILED FOR RECORD

11/05/2001 01:44PM

PAID: 146.00

Susan D. Prouse, Clerk
Superior Court of Chatham County
Chatham County, Georgia

Prepared by:

Inglesby, Falligant, Horne,
Courington & Chisholm, P.C.

P. O. Box 1368

Savannah, Georgia 31402-1368

Attn: Robert B. Brannen, Jr., Esq.

File No.: 15126.002

2288
163

DECLARATION OF CONDOMINIUM
for
BROCKINGTON SQUARE
A Condominium
Savannah, Chatham County, Georgia

Recording References:

Plat recorded in Condominium Plat Book 1, page 154,
Chatham County, Georgia records.

Plans recorded in Condominium Plat Book 1, page 154,
Chatham County, Georgia records.

**BROCKINGTON SQUARE
A Condominium**

TABLE OF CONTENTS

<u>ARTICLE</u>	<u>TITLE</u>	<u>PAGE</u>	
I	Name	1	228B
II	Definitions	2	
III	Location, Property Description Plat and Plans	4	
IV	Description and Boundaries of the Units	5	
V	Common Elements	6	
VI	Limited Common Elements	7	
VII	Association Membership and Allocation of Votes	7	
VIII	Allocation of Liability for Common Expenses	8	
IX	Association Rights	9	
X	Assessments	10	
XI	Insurance	14	
XII	Casualty Losses	17	
XIII	Architectural Controls	19	
XIV	Restrictions on Use, Conduct and Other Matters	21	
XV	Leasing	26	
XVI	Transfer of Title to Units	27	
XVII	Maintenance Responsibility	27	
XVIII	Mortgage Rights	31	
XIX	Declarant Rights	34	
XX	Expansion Option	35	
XXI	Security and Safety	37	
XXII	Eminent Domain	37	
XXIII	Easements	37	
XXIV	General Provisions	38	
XXV	Amendments	39	
XXVI	Preparer	39	

EXHIBITS

- Exhibit "A"
- Exhibit "B"
- Exhibit "C"
- Exhibit "D"

Legal Description of Submitted Property
 Legal Description of Additional Property
 Description of Plans and Plat
 Articles of Incorporation and Bylaws of
 Brockington Square Condominium Association,
 Inc.

DECLARATION OF CONDOMINIUM
for
BROCKINGTON SQUARE
A Condominium

Savannah, Chatham County, Georgia

This Declaration is made this 25 day of June, 2001, by Brockington Square, LLC, a Georgia limited liability company (hereinafter referred to as the "Declarant").

RECITALS:

A. Declarant owns certain real property and improvements constructed thereon in Savannah, Chatham County, Georgia, and being more particularly described in Exhibit "A", attached hereto and incorporated herein and made a part hereof by reference thereto (hereinafter referred to and defined as the "Submitted Property"); and

B. Declarant desires to reserve the right and option to submit to the provisions of the Act and this Declaration at a later date all or any portion of certain real property located in Chatham County, Georgia, and being more particularly described on Exhibit "B", attached hereto and incorporated herein and made a part hereof by reference thereto (the "Additional Property"); and

NOW, THEREFORE, Declarant, by this Declaration, does hereby submit the Submitted Property, together with all of the improvements located thereon to the condominium form of ownership and to the provisions of the Georgia Condominium Act, O.C.G.A. section 44-3-70 et seq., all as may be amended from time to time (hereinafter referred to as the "Act"). From and after the recording of this Declaration in the Chatham County, Georgia records, the Submitted Property shall be owned, held, transferred, sold, conveyed, used occupied, and mortgaged or otherwise encumbered, subject to all of the terms, provisions, covenants and restrictions of this Declaration and of the Act. The terms and provisions of this Declaration shall constitute covenants running with the land.

ARTICLE I

NAME

A. The name of the condominium shall be "Brockington Square, a Condominium," the same being located in City of Savannah, Chatham County, Georgia.

2288

455

ARTICLE II

DEFINITIONS

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

(1) Act means the Georgia Condominium Act, O.C.G.A. section 44-3-70, et seq., as it may be amended from time to time.

228B

(2) Additional Property means the real property described on Exhibit "B" attached hereto and made a part hereof by this reference.

(3) Additional Subdivision means with regard to any portion of the property described in Exhibit "A" which is originally designated as one Unit hereunder, the reconfiguration/construction of more than one Unit within the boundaries of the original Unit in accordance with the provisions of the Condominium Act and this Declaration.

466

(4) Articles or Articles of Incorporation means the Articles of Incorporation of Brockington Square Condominium Association, Inc., a Georgia non-profit corporation, which have been filed with the Secretary of State of the State of Georgia, and attached to this Declaration as Exhibit D, and incorporated herein by this reference.

(5) Association means "Brockington Square Condominium Association, Inc., " a Georgia non-profit corporation formed for the purpose of exercising the powers of the Association of this Condominium.

(6) Board of Directors or Board means the Directors of Brockington Square Condominium Association, Inc.

(7) Building shall mean the composite of all Units, Common Elements and Limited Common Elements, as shown on the Plans and Plat.

(8) Bylaws mean the Bylaws of Brockington Square Condominium Association, Inc., a Georgia non-profit corporation, attached to this Declaration as Exhibit D and incorporated herein by this reference.

(9) Common Elements mean all portions of the Condominium which is not included within the boundaries of a Unit, and shall include the common areas and facilities as defined in the Act, this Declaration, the Bylaws, and all amendments to such.

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

Common Elements, together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the Act, this Declaration, the Bylaws, and all amendments to such.

(11) Condominium means all that property described in Exhibit "A", attached hereto and incorporated herein by this reference, submitted to the provisions of the Act by this Declaration.

(12) Condominium Documents or Condominium Instruments shall mean this Declaration, the Articles of Incorporation and the Bylaws and all other exhibits referenced or attached to any of such, and all other documents, rules, and regulations promulgated pursuant to the authority created herein and by the Act, all as said documents or instruments shall be amended from time to time. Any amendment or certification of any condominium instrument shall from the time of the recordation of such amendment or certification, be deemed an integral part of the affected condominium instrument or document, so long as such amendment or certification was made in accordance with the provisions of the Act and this Declaration.

(13) Condominium Unit shall mean a Unit together with the undivided interest in the Common Elements appertaining to that Unit.

(14) Declarant means Circa Properties, Inc., a Georgia corporation, or its successors-in-title, or assigns, who take title to any portion of the Submitted Property for the purpose of development or sale and who are designated as the Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

(15) Declaration means this Declaration of Condominium for Brookington Square, a Condominium, which is recorded in the Chatham County, Georgia records for the purpose of submitting the Condominium to the Act, and any amendments thereto.

(16) Eligible Mortgagee means the holder of a first Mortgage who has requested notice of certain items as set forth in this Declaration.

(17) Limited Common Element means the portion of the Common Elements reserved for the exclusive use of those entitled to the use of one or more (but less than all) of the Units.

(18) Limited Common Expenses means the expenses described in Article VIII, or otherwise specifically identified in the Act or the Condominium Documents as Limited Common Expenses.

(19) Majority means the number of Condominium Unit Owners or their proxies, entitled to cast fifty-one (51%) percent or more of the total votes of said Association in accordance with the voting rights as determined by the Act, this Declaration, the Bylaws, and all amendments thereto, except where otherwise provided by the Act, this Declaration, the Articles of Incorporation or the Bylaws thereof.

228B

467

(20) Mortgage means any mortgage, deed to secure debt, trust deed, or other instrument conveying a lien upon or security interest in a Unit.

(21) Mortgagee means any grantee or holder of any Mortgage.

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

(23) Owner means the record title holder of a fee simple or undivided fee simple interest in a Unit, but does not include a Mortgagee. If a Unit is owned by more than one Person, the "Owner" shall refer to all such co-owners collectively, who shall be jointly and severally responsible for the obligations of an Owner and shall share the right of any Owner under the Condominium Documents and the Act.

(24) Person shall mean a natural person, corporation, partnership, association, trust or other entity, or any combination thereof.

(25) Plans means the floor plans of the Buildings referenced in Article III of this Declaration and more particularly described on Exhibit "C" attached hereto and made a part hereof by this reference.

(26) Plat means the plat of survey of the Submitted Property referenced in Article III of this Declaration, and more particularly described on Exhibit "C" attached hereto and made a part hereof by this reference.

(27) Submitted Property means the property lawfully submitted to the provisions of the Act by the recording of Condominium Instruments pursuant to the provisions of the Act or this Declaration, said property being more particularly described on Exhibit "A" attached hereto and by reference incorporated herein and made a part hereof.

(28) Unit shall mean any portion of the Condominium intended for any type of independent ownership and use as described in paragraph Article IV.

ARTICLE III

LOCATION, PROPERTY DESCRIPTION, PLAT AND PLANS

A. Location. The Condominium is located on a parcel of real property having a street address of 310 Tibet Avenue, Savannah, Chatham County, Georgia, and more particularly described on Exhibit "A" attached hereto and made a part hereof by this reference.

B. Plat. The Plat of the Condominium has been filed for record in the Office of the Clerk of the Superior Court of Chatham County, Georgia, as more particularly described on Exhibit "C" attached hereto and made a part hereof by this reference.

22
00
00
1 3 2 2 2
F 58
1 3 2 2 2

C. Plans. The Plans of the Buildings have been filed for record in the Office of the Clerk of the Superior Court of Chatham County, Georgia, as more particularly described on Exhibit "C" attached hereto and made a part hereof by this reference.

ARTICLE IV

DESCRIPTION AND BOUNDARIES OF THE UNITS

A. Description. Each Building will contain multiple Units, and the Condominium will contain a maximum of 16 Units. Each Unit consists of a dwelling, as depicted on the Plat and Plans, and is assigned a percentage of the undivided interest in the Common Elements equal to every other Unit's 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 Documents. The ownership of each Unit includes, and there shall pass with the title to each Unit as appurtenances thereto (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 and membership in the Association. The undivided interest in the Common Elements may not be separated from title to the Unit to which it is assigned and any attempt to convey such undivided interest separate from conveyance of the Unit shall be null and void. Each Owner is entitled to exclusive possession of his or her Unit, together with an interest in and right to use, in common with others, the Common Elements and any Limited Common Elements assigned to such Unit.

B. Boundaries. The boundaries of each Unit shall be determined in the following manner:

(1) Horizontal Boundaries.

(a) The upper horizontal boundary shall be the plane of the lower surfaces of the structural floor joists of the Unit above or roof joists as the case may be.

(b) The lower horizontal boundary shall be the plane of the upper surface of the floor joists, cement or slab as the case may be.

(2) Vertical (Perimeter) Boundaries. The vertical boundaries of the Unit shall be the planes between the wall studs and the outermost unexposed surface of the wallboard or other material comprising the interior surface of the perimeter walls of the Unit as shown on the Plans. Exterior doors and windows, including, but not limited to, any sliding glass doors, within the exterior, perimeter walls of the Building shall be part of the Unit.

(3) Other Improvements. Except where provisions of this Declaration provide otherwise, all lath, wallboard, plasterboard, plaster, paneling, molding, tile, wallpaper, paint, floor coverings, and any other materials constituting any part of the finished surfaces of walls, ceilings, or floors shall be deemed to be within the boundaries of the Unit, and all other portions of walls, floors or ceilings shall be deemed Common Elements. Except as provided in Article IV below, all spaces, interior walls and partitions, and other fixtures and improvements within the boundaries of a Unit are a part of the Unit.

(4) HVAC and Utilities. All portions of the heating, ventilation, and air-conditioning systems serving a single Unit (including any part of any such system located outside the boundaries of the Unit), including chutes, flues, compressors, and ducts and all conduits, wires, pipes, plumbing fixtures and portions of any other systems serving a single Unit are part of that Unit. Each Unit shall include all plumbing, electrical, gas, cable television, and other pipes, lines and fixtures located within such Unit, provided, however, that no pipes, wires, conduits or public utility lines situated within such Unit and forming part of any system serving one or more other Units or the Common Elements shall be deemed to be a part of such Unit. Any portions of such items or systems which serve more than one Unit are part of the Common Elements.

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

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

ARTICLE V

COMMON ELEMENTS.

A. Description. The Common Elements consist of all portions of the Condominium not located within the boundaries of a Unit, including the Limited Common Elements and all other items or fixtures which are specifically identified in this Declaration or the Plat and Plans as Common Elements.

B. Ownership. Ownership of the Common Elements shall be by the Owners as tenants-in-common. The Common Elements shall remain undivided, and no Owner nor any other person shall bring any action for partition or division of the whole or any part thereof except as provided in the Act.

C. Use. 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 encroach upon the lawful rights of the other Owners.

ARTICLE VI

LIMITED COMMON ELEMENTS

A. Description. The Limited Common Elements and the Unit(s) to which they are assigned are as follows:

(1) to the extent that a deck, patio or balcony serving a Unit is not within the boundaries of the Unit, the deck, patio or balcony is assigned as a Limited Common Element to the Unit having direct access to such deck, patio or balcony;

228B

(2) the doorsteps or stoops leading as access to a deck, patio, or balcony are assigned as Limited Common Elements to the Unit to which the deck, patio or balcony is assigned and the doorsteps, and stoops leading as access to a Unit;

(3) the mailbox, if any, is assigned as a Limited Common Element to the Unit it serves;

471

(4) 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;

(5) any gas or electric meter which serves only one Unit is assigned as a Limited Common Element to the Unit so served.

B. Assignment of Limited Common Elements. The Board may assign Common Elements not previously assigned as Limited Common Elements, without the need for a vote of the membership, upon written application to the Association by the Unit Owner or Owners for whose exclusive use such Common Element is requested and approval by a majority of the total number of directors on the Board. Upon such application and approval, the Association shall prepare and execute an amendment to the Declaration assigning the Common Element as a Limited Common Element, which amendment shall be executed by the Owner or Owners making such application. Such amendment shall be delivered and become effective as provided in Section 44-3-82 of the Act, as amended.

ARTICLE VII

ASSOCIATION MEMBERSHIP AND ALLOCATION OF VOTES

A. The Owner of each Unit, by virtue of ownership of a fee or undivided fee interest in a Unit, is a member of Brockington Square Condominium Association, Inc., and, except as otherwise provided in this Declaration or the Bylaws, shall be entitled to exercise the vote allocated to such Unit on all matters upon which members of the Association are entitled to vote pursuant to the Act and the Condominium Instruments. Each Unit is allocated a vote equal to every other Unit's vote.

ARTICLE VIII

ALLOCATION OF LIABILITY FOR COMMON EXPENSES

A. Equal Allocation. Except as otherwise specifically provided in this Declaration or the Bylaws, each Unit is hereby allocated liability for Common Expenses equal to that allocated to every other Unit, subject to the following:

(1) Limited Common Expenses. In addition to such other expenses as are specifically identified as Limited Common Expenses under the Act or this Declaration, the following expenses shall be Limited Common Expenses and shall be assessed against the benefited Units as indicated below:

228B

(a) The costs incurred or anticipated to be incurred by the Association in providing special or additional services to any Unit or the Owners or Occupants thereof upon request of the Owner or Occupants shall be assessed against the benefited Unit, or if attributable to more than one but less than all Units, then allocated among the benefited Units equally; and

472

(b) Any Common Expenses associated with the maintenance, repair or replacement of a Limited Common Element, including contributions to a reserve fund for such purposes, shall be assessed against the Unit to which that Limited Common Element is assigned at the time the assessment is levied, or if assigned to more than one Unit, then in equal shares against all such Units.

(2) Specific Unit Assessments. The Board of Directors shall have the power to assess specific Units pursuant to this paragraph A(2) and Section 44-3-80(b) of the Act, as it shall deem appropriate. Failure of the Board of Directors to exercise its authority under this paragraph A(2) 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.

(a) Any Common Expenses benefiting fewer than all of the Units, or significantly disproportionately benefiting all Units, other than Common Expenses incurred in maintaining those portions of Units for which the Association is specifically responsible under this Declaration, may be assessed equitably among all of the Units which are benefited according to the benefit received, as the Board may reasonably determine; and

(b) Any Common Expenses occasioned by the negligence or misconduct of the Owner or Occupant of any Unit, or their guests, may be specially assessed against the Unit of such Owner or Occupant.

For purposes of this paragraph A(2), non-use by an Owner of the Common Elements, any common facility, or any item which is budgeted as a Common Expense shall not constitute a benefit to fewer than all Units, unless the Board determines that such non-use of the Common Elements, common facilities, or budgeted Common Expenses results in an identifiable, calculable reduction in cost to the Association.

(3) Reallocation. No reallocation of liability for Common Expenses pursuant to this Declaration shall affect any Common Expense assessments or installment thereof due and payable prior to such reallocation.

ARTICLE IX

ASSOCIATION RIGHTS

A. Rights of the Association. In addition to and not in limitation of all other rights it may have under the Act, the Georgia Nonprofit Corporations Act, and the Condominium Instruments, the Association, acting through its Board of Directors or such Association employees or agents as the Board may authorize, shall have the right and authority:

(1) to enter into Units for maintenance, emergency, security, or safety purposes, which right may be exercised by the Association's 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.

(2) to make and to enforce reasonable rules and regulations governing the use of the Condominium, including the Units, Limited Common Elements, and Common Elements, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Such rules and regulations shall be binding upon all Owners, Occupants, guests, and invitees until and unless overruled, canceled, or modified at a meeting of the Association by the vote, in person or by proxy, of Owners holding at least a Majority of the total Association vote, and by the vote of Declarant, so long as Declarant has the right to appoint at least a majority of the members of the Board of Directors pursuant to Article XIX.

(3) to enforce use restrictions, other provisions of the Condominium Instruments, and Association 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, and by any other legal means. Any fines imposed in accordance with Section 44-3-76 of the Act, shall be considered an assessment against the Unit, shall be secured by a lien in favor of the Association, and may be collected in the manner provided for collection of other assessments under this Declaration and the Act;

228B

473

- (4) to grant permits, licenses, access, drainage and utility easements, and other easements over the Common Elements;
- (5) to control, manage, operate, maintain, improve and replace all portions of the Condominium for which the Association is assigned maintenance responsibility under this Declaration;
- (6) to deal with the Condominium in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of the Act and this Declaration;
- (7) to represent the Owners in dealings with governmental entities on matters related to the Condominium;
- (8) to assign the Association's right to future income, including the right to receive assessments, and to secure money borrowed to fund Common Expenses;
- (9) to enter into contracts, agreements for maintenance of the Condominium, covenants to share costs, or other similar agreements, on behalf of itself and the Owners with other owners associations or similar entities, including, without limitation, agreements or covenants which provide that the Association shall contribute toward the cost of maintaining property and facilities which are not part of the Condominium but which benefit the Association and the Owners, such as property and facilities subject to easements which benefit the Condominium and Owners; and
- (10) to close or cease operation of any portion of the Common Elements (excluding the Limited Common Elements), temporarily or permanently, and to discontinue or suspend non-essential services which the Association provides to the Owners; provided, the Board shall give the Owners at least 30 days' prior notice of any permanent closure, cessation of operations or discontinuation of service. Subject to compliance with applicable laws and ordinances the Owners may require that the Association re-open or resume operation of Common Elements or resume discontinued services, upon the vote or written consent, or any combination thereof, of Owners entitled to cast a Majority of the total Association votes.

ARTICLE X
ASSESSMENTS

A. Purpose of Assessment. The Association is authorized to levy assessments, as provided in this Declaration, the Bylaws, and the Act, for the purpose of defraying the Common Expenses.

228B
474

B. Creation of the Lien and Personal Obligation For Assessments. The Owner of each 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 levied pursuant to the Association's operating budget, as described in subparagraph (C) below; (ii) special assessments levied pursuant to subparagraph (D) below; (iii) other assessments for Limited Common Expenses as provided in paragraph VIII A(1); and (iv) specific assessments levied against the Owner's Unit as authorized pursuant to paragraph VIII A(2) or as otherwise specifically authorized in the Condominium Instruments or the Act, including but not limited to reasonable fines imposed in accordance with the terms of this Declaration or the Bylaws.

All such assessments, together with late charges, interest, costs of collection (including but not limited to reasonable attorney's fees actually incurred, whether or not suit is filed), and if the Board so elects, the fair rental value of the Unit, all as provided for in subparagraph (E) below, and Section 44-3-109 of the Act, shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment became due and shall be a charge and continuing lien on the Unit against which each assessment is levied. The Association's lien shall have the priority provided in the Act. Upon conveyance of a Unit, the grantor and grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of such conveyance.

2288
475

Declarant shall be responsible for all Common Expenses incurred prior to the conveyance of the first Unit. Thereafter, the Owner of each Unit, including Declarant for the period of its ownership of any Unit, shall be liable for assessments for its share of Common Expenses, which assessments shall be paid in such manner and on such dates as the Board may fix by resolution. Unless otherwise provided, the annual assessments shall be paid in equal monthly installments due on the first day of each month.

No Owner may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, non-use of the Common Elements, the Association's failure to perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

C. Computation of Operating Budget and Annual Assessment. At least 30 days prior to the beginning of the Association's fiscal year, the Board shall prepare a budget covering the estimated Common Expenses to be incurred during the coming year, separately reflecting general Common Expenses and Limited Common Expenses. The budget shall include as separate line items, as applicable, an amount to be placed in a reserve account for capital repairs, and replacements of those assets whose repair or replacement would be a general Common Expense and for those assets whose repair or replacement would be a Limited Common Expense, in accordance with a separate reserve budget adopted pursuant to subparagraph F below. The budget shall also take into account any surplus from prior years, to the extent not previously added to reserves.

The Board shall cause the budget and notice of the annual assessments to be levied against each Unit for the following year to be delivered to each Owner at least 30 days prior to

the beginning of the Association's fiscal year for which such budget is to be effective. If the budget would result in an increase in the annual assessment in excess of a percentage equal to the annual rate of inflation as measured by the Consumer Price Index for All Urban Consumers for the immediately preceding 12-month period, then the budget and the annual assessment may be disapproved at a duly called and constituted meeting of the membership by a vote of Owners entitled to cast a Majority of the total Association vote. Otherwise, the proposed budget shall become effective on the date set forth in the notice.

Notwithstanding the foregoing, in the event that the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for any year, then until such time as a budget has been determined as provided herein, the budget in effect for the current year shall continue in effect for the succeeding year. In such case, the Board may propose a new budget at any time during the year, subject to the foregoing procedures.

D. Special Assessments. If the Association incurs or expects to incur unbudgeted Common Expenses or the annual assessment otherwise proves inadequate for any year, the Board may, at any time, and in addition to any other rights it may have, levy a special assessment to cover the additional Common Expenses. Any such special assessment shall be levied against the Units which are responsible for the additional expense under Article VIII. Notice of any such special assessment shall be sent to the Owners of all Units against which such special assessment is made at least 30 days prior to the due date thereof. Except as otherwise provided in this Act, any special assessment which would cause the average total of special assessments (exclusive of any special assessment for Limited Common Expenses) levied in one fiscal year to exceed two hundred (\$200.00) dollars per Unit shall be subject to the approval of a Majority of the Owners.

E. 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.

(1) If any monthly installment of annual assessments or any part thereof is not paid in full by the 10th day of the month or if any other charge is not paid within 10 days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or 10% percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner and interest at the rate of 10% percent or such higher rate as may be permitted by the Act shall accrue from the due date.

(2) If part payment of assessments and related charges is made, the amount received shall be applied in the following order, and no restrictive language on any check or, draft shall be effective to change the order of application:

(a) respectively, to any unpaid late charges, interest charges, and specific assessments (including, but not limited to, fines) which are not the subject matter of suit in the order of their coming due;

228B

476

- (b) to costs of collection, including reasonable attorney's fees actually incurred by the Association;
- (c) to any unpaid installments of the annual assessment or special assessments which are not the subject matter of suit in the order of their coming due;
- (d) respectively, to any unpaid late charges, interest, specific assessments (including, but not limited to, fines), and installments of the annual assessment or special assessments which are the subject matter of suit in the order which they came due;
- (3) If assessments, fines or other charges or any part thereof due from an Owner remain delinquent and unpaid for a period greater than 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 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. If an Owner fails to pay all assessments and related charges currently due within 10 days of the date of the notice of delinquency, the Board of Directors may then accelerate and declare immediately due all 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.
- (4) If assessments and other charges or any part thereof remain unpaid more than 30 days after the assessment payments first become delinquent, the Association, acting through the Board of Directors, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law and suspend the Owner's and/or Occupant's right to use the Common Elements (however, the Board may not limit ingress or egress to or from the Unit).
- (5) In the event any assessment is delinquent for 60 days or more, in addition to all other rights provided in the Act and this Declaration, the Association shall have the right upon 10 days written notice, to suspend any utility services, the cost of which are a Common Expense of the Association to that Unit until such time as the delinquent assessments and all costs permitted pursuant to this subparagraph are paid in full. Any costs incurred by the Association in discontinuing and/or reconnecting any utility service, including reasonable attorney's fees, shall be an assessment against the Unit and shall be collected as provided herein for the collection of assessments. The notice requirement of this subparagraph shall be deemed complied with if the notice is sent by certified mail to the Unit address and to any other address the Owner of the Unit has provided in writing to the Association.

F. Capital Budget and Reserve Contribution. The Board of Directors shall prepare and thereafter review on an annual basis, a capital budget which shall take into account the number

228B

477

and nature of replaceable assets maintained by the Association as a general Common Expense and the number and nature of replaceable assets maintained by the Association as a Limited Common Expense, the expected life of each asset, and the expected repair or replacement cost over the useful life of each asset. The Board shall establish an amount to be contributed on an annual basis to reserve funds to permit meeting the projected capital needs of the Association over the period of the budget. The capital contribution required, if any, shall be included within the budget and assessments as provided in subparagraph C above. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

228B

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 ten days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars, 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.

478

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 reserve account.

ARTICLE XI INSURANCE

A. Owner Responsibility. Every Unit Owner shall be obligated to obtain and maintain at all times insurance covering the structural portions of his or her Unit to the extent not insured by policies maintained by the Association, and to furnish a copy of such insurance policy or policies to the Association. In the event that any such Unit Owner fails to obtain insurance as required by this subparagraph, the Association may purchase such insurance on behalf of the Unit Owner and assess the cost thereof to the Unit Owner, to be collected in the manner provided for collection of assessments under Article X.

Each Unit Owner shall notify the Board of Directors of all structural improvements made by the Unit Owner to his or her Unit. Any Unit Owner who obtains an individual insurance policy covering any portion of the Condominium, other than improvements and betterments made by such Owner at his or her expense and personal property belonging to such Owner, shall file a copy of such individual policy or policies with the Board of Directors

within 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 canceled.

B. Association Responsibility. The Association shall obtain and maintain at all times, as a Common Expense, insurance as required by Section 44-3-107 of the Act and as required herein. At least every two years the Board of Directors shall conduct an insurance review, to determine if the policies then in force are adequate to meet the needs of the Association and to satisfy the requirements of the Act. The Board may rely upon a review and verification of the adequacy of insurance coverage by the Association's insurance agent. Such policies 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 the amount of coverage required hereunder. Such policies shall include:

2228B

(1) Hazard Insurance. The Association shall obtain a blanket hazard insurance policy or policies affording, at a minimum, fire and extended coverage, including coverage for vandalism and malicious mischief, on all structures within the Condominium, except that the Association need not obtain coverage for (i) any part of a Unit which is not depicted on the original Plats and Plans or included in the original Mortgage; (ii) improvements to Units or Limited Common Elements made by the Owners; and (iii) any structures or portions thereof covered by builder's risk insurance, provided that the Association is named as an additional insured on the builder's risk insurance policy. Notwithstanding this minimum coverage requirement, the Board shall use reasonable efforts to secure a blanket hazard insurance policy providing "all risk" coverage.

479

The hazard insurance policy shall provide coverage in an amount equal to the future replacement value of the structures within the Condominium, before application of any deductible. Unless the Association otherwise provides notice in writing to the Owners, the improvements and betterments made by the individual Unit Owners shall be excluded from this required coverage. However, each Owner shall have the right to obtain additional coverage for such improvements betterments, or personal property at his or her own expense.

(2) Liability Insurance. The Association shall also obtain a liability insurance policy or policies providing coverage for bodily injury, death, and property damage, in at least such amounts as required by Section 44-3-107 of the Act. Such insurance shall cover the Association, its Board of Directors and officers, all agents and employees of the Association, the Owners, the Mortgagees, and all other persons entitled to occupy any Unit, as their interests may appear, for all occurrences commonly insured against arising out of or in connection with the use, ownership, or maintenance of portions of the Condominium which the Association is obligated to maintain. The policies shall not provide coverage for individual Owners or Occupants for liability arising within their Units.

(3) Other Insurance. In addition to the insurance required above, the Association shall obtain:

- (a) worker's compensation insurance, if and to the extent necessary to meet the requirements of law;
- (b) officers' and directors' liability insurance in such amounts as the Board may determine, if available at reasonable cost;
- (c) 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 such amount as the Board deems appropriate in the exercise of its business judgment, but in no event less than three month's assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, such fidelity coverage may be reduced based on the implementation of financial controls which take one or more of the following forms:

228B

480

- (i) the Association or management company, if any, maintains a separate bank account for the operating 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;
- (ii) 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;
- (iii) two members of the Board of Directors must sign any checks written on the reserve account; and
- (d) such other insurance as the Board of Directors may determine to be necessary, including, without limitation, a blanket flood insurance policy, if required as a condition to Mortgagees making first mortgage loans on the Units.

(4) Description of Insurance Policies. All such insurance coverage shall be written in the name of the Association as trustee for itself, each of the Owners, and the Mortgagees, if any. All policies shall be written with a company licensed to do business in the State of Georgia. The insurance company shall provide insurance certificates to each Owner and each Mortgagee upon request. In addition, the Board shall use reasonable efforts to obtain policies that provide the following:

(a) 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;

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

(c) until the expiration of 30 days after the insurer gives notice in writing to the Mortgagee of any Unit, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit, the other Unit Owners, the Board of Directors, or any of their agents, employees, or household members, nor be canceled for non-payment of premiums;

(d) the master policy may not be canceled, substantially modified, or subject to non-renewal without at least 30 days prior notice in writing to the Board of Directors and Mortgagees of Units;

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

(f) the deductible amount per occurrence shall not exceed one thousand (\$1,000,00) dollars.

(5) No Contribution. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees.

(6) Mortgagee Protection. Nothing contained herein gives any Owner or other party 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 Unit Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee.

ARTICLE XII

CASUALTY LOSSES

A. Payment of 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 which would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected Owner's portion of the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence,

228B

481

each Owner shall be responsible for paying the deductible pertaining to his or her Unit, if any. If any Owner fails to pay the deductible when required under this subparagraph, then the Association may pay the deductible and assess the cost to the Owner pursuant to Article X, provided, if the deductible is for insurance required under the Act, no Owner shall be responsible for more than one thousand (\$1,000.00) dollars, or such higher amount as the Act may authorize, of such deductible for any one occurrence.

B. Obligation to Repair and Reconstruct. 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 80% of the Unit Owners, including the Owner or Owners of any damaged Unit or Units, vote not to proceed with the reconstruction and repair of the structure, the Board of Directors or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford priority to any Unit Owner with respect to the distribution of insurance proceeds for any such Unit.

C. Cost Estimates. Immediately after a fire or other casualty causing damage to the Condominium, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Unit) to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

D. Source and Allocation of Proceeds. If the Board determines that the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, or if the insurance proceeds are otherwise inadequate to pay the actual costs of repair and reconstruction, the Board may levy an assessment to cover the additional costs. Any such assessment shall be levied against all Owners, if the damaged property is maintained as a general Common Expense, or against the Owners of the benefited Unit(s), if the damaged property is maintained as a Limited Common Expense. Such an assessment shall not be subject to the limitation on special assessments set forth in Article X(D). If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as the Board may direct.

E. Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Condominium was originally constructed, except where changes are necessary to comply with current applicable building codes or where the Board approves improvements not in accordance with the original plans and specifications. To the extent insurance proceeds are available, the Association may reconstruct or repair Owner improvements damaged as a result of fire or other casualty.

F. Encroachments. Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided

228B

482

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.

G. Construction Fund. The net proceeds of insurance and such additional funds as the Association collects from assessments against Owners on account of a casualty shall constitute a construction fund which the Association shall disburse in payment of the cost of reconstruction and repair in the manner set forth in this paragraph. The Association shall disburse such funds in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as the Board may designate.

BOOK 228B

PAGE 483

ARTICLE XIII ARCHITECTURAL CONTROLS

A. Architectural Standards. Except as provided herein, no Owner, Occupant, or other Person except the Association may make any encroachment onto the Common Elements or Limited Common Elements, or make any exterior change, alteration (including painting and landscaping), or addition to the Common Elements or Limited Common Elements, nor erect, install, place or post any object, sign, flag, light, sculpture, artificial or real vegetation, storm doors or window, door knob or knocker, or other thing on the exterior of the building or on any portion of the Condominium visible from outside of a Unit, without first obtaining the written approval of the Board or its designee in accordance with the procedures set forth below. The Board may allow such encroachments on the Common Elements and Limited Common Elements as it deems appropriate pursuant to this Article XIII.

B. Alterations Within Units. Owners may make any improvements, renovations, or alterations within their Units that do not conflict with the requirements of this Declaration, impair the structural integrity of the building or any portion thereof, or otherwise materially lessen the support of any portion of the Condominium, upon first notifying the Board or its designee and providing the Board or its designee with evidence reasonably acceptable to it that the proposed improvements, renovation, or alterations will not so impair the structural integrity of any structure or lessen the support of any portion of the Condominium. No Person other than the Association may make any alterations within a Unit which involve connecting to Common Element pipes, lines, conduits and/or other apparatus for access to common utilities without first obtaining the written approval of the Board, or its designee.

C. Application Procedures. Applications for approval of any such architectural modification shall be in writing and shall include detailed plans and specifications for the proposed modification, addition, or alteration and such other information as the Board or its designee may reasonably require. The Board or its designee may publish written standards for permitted alterations or additions and any request in substantial compliance therewith shall be approved. Otherwise, the Board or its designee shall be the sole arbiter of such application and

may with hold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction which is not in conformance with approved plans. The Board or its designee may consider, but shall not be limited to consideration of, uniformity of appearance, the quality of that proposed work, the materials to be used, and harmony with the design of other portions of that Condominium. After final plans and specifications have been approved, no changes may be made in the approved plans or specifications without the consent of the Board or its designee.

D. Condition of Approval. As a condition of approval for a requested modification, addition, or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition, or alteration. In the discretion of the Board or its designee, 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 or herself and all successors-in-interest.

E. Limitation of Liability. Review and approval of any application pursuant to this paragraph is made on the basis of aesthetic considerations only and neither the Board of Directors or its designee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board of Directors, its designee, or any 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 or modifications.

F. No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors and any committee which it may designate to exercise its authority under this paragraph will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board of Directors or its designee 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 or its designee, 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 subsequently or additionally submitted for approval or consent.

G. 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, 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. 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 decisions made hereunder.

228B
BOOK

484
PAGE

The Board may exclude from the Condominium any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this paragraph and the architectural standards, subject to the notice and hearing procedures contained in the Bylaws of the Association. Neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this subparagraph (G).

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

2288
BOOK

ARTICLE XIV

RESTRICTIONS ON USE, CONDUCT AND OTHER MATTERS

485
PAGE

A. The following restrictions apply to the Condominium and the Board may adopt rules and regulations which supplement, expand, further define or clarify the restrictions set forth in this Article XIV:

- (1) Residential Use. 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, including business uses ancillary to a primary residential use, except that the Owner or Occupant residing in a Unit may conduct such 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 the exterior of the Unit; (ii) the business activity does not involve visitation of the Unit by employees, clients, customers, suppliers or other business invitees; (iii) the business activity conforms to all zoning requirements for the Condominium; (iv) the business activity does not increase traffic in the Condominium; (v) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; and (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 may be determined in the sole discretion of the Board of Directors.

The terms "business" and "trade," as used in this provision, shall be construed to 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 Declarant in accordance with the rights reserved under Article XIX or by an on-site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this subparagraph.

(2) Single Family Occupancy. Occupancy of each Unit shall be limited to a single family or, in the alternative, that number of unrelated persons equal to the number of bedrooms in the Unit (as depicted on the Plans referenced in Article III) plus one additional person. For purposes of this subparagraph (2), "occupancy" means staying overnight in a Unit for a total of more than 30 days, either consecutive or non-consecutive, in any calendar year. "Single family" means any number of persons, all of whom are interrelated by blood, adoption, or marriage, and no more than one additional person who is not so related. The phrase "by blood" shall be deemed to encompass only children, grandchildren, grandparents, brothers, sisters, nieces, nephews, parents, aunts, uncles, and first cousins, and no other degree of kinship. "Marriage" shall include common law marriage as provided for under Georgia law, and "by marriage" shall include in-laws and step-relatives.

(3) Relocation of Boundaries. No Unit may be combined with other Units or Common Elements.

(4) Timesharing. No Unit shall be made subject to any type of timesharing, fraction-sharing, or similar program whereby the right to exclusive use of a Unit rotates among members of the program on a fixed or floating time schedule over a period of years.

(5) Animals and Pets. No animals, reptiles, birds, or other non-human living creatures shall be raised, bred, or kept on any part of the Condominium, except that a total of two dogs or cats weighing less than 15 pounds each, and a reasonable number of birds, fish, or other usual and common household pets may be kept in a Unit, provided that such pets are not kept, bred, or maintained for any commercial purpose, do not endanger the health or unreasonably disturb the Owner or Occupants of any other Units, and do not create a nuisance.

At all times when pets are outside a Unit, they must be kept on a leash or otherwise contained so as to be under the complete physical control of a responsible person. The keeping of pets and their ingress, egress, and travel upon the Common Elements shall be subject to such rules and regulations as the Board may promulgate. Failure to comply with these restrictions or such rules and regulations shall be grounds for the Board to bar the pet from use or travel upon the Common Elements. The Board may subject pet ingress, egress, use, or travel upon the Common Elements to a user fee, which may be a general fee for all similarly situated persons or a specific fee imposed for failure of an Owner or Occupant to abide by the rules, regulations, and restrictions

applicable to pets. In addition, any pet which endangers the health of any Owner or occupant of a Unit or which creates a nuisance or an unreasonable disturbance, as may be determined in the sole discretion of the Board, must be permanently removed from the Condominium upon seven days written notice from the Board.

(6) Signs. No person shall erect, post, or place any sign of any kind on the Common Elements without the Board's prior approval. "For Sale" and "For Rent" signs are prohibited and may not be displayed in any Unit or on any portion of the Common Elements; provided, however, the Board of Directors may provide a bulletin board or other display area on the Common Elements where Owners can place notices regarding Units available for sale or lease.

228B
BOOK

(7) Rubbish, Trash, and Garbage . The Owner or Occupant of each Unit shall ensure that all rubbish, trash, and garbage is regularly removed from the Unit and is not allowed to accumulate within the Unit. No trash, rubbish, and garbage shall be placed outside of a Unit or permitted to accumulate on the Common Elements. All trash, rubbish, and garbage shall be placed in receptacles approved by the Board and shall be placed at designated times in designated locations within the Condominium. The Board shall be authorized to designate a single sanitation company for the Condominium, and all Occupants agree to utilize said company.

487
PAGE

(8) Use of Common Elements. Except for the right of ingress and egress over the Common Elements, the Owners are prohibited from using any portion of the Condominium outside of their respective Units and the Limited Common Elements assigned to their respective Units, except as the Board may expressly allow, and then subject to such rules and regulations as the Board may adopt. Use of the Limited Common Elements is restricted exclusively to the Owners and Occupants of the Unit to which such Limited Common Elements are assigned, and their family members, guests, tenants and invitees.

With the Board's prior written approval and subject to any restrictions the Board may impose, an Owner or Occupant may reserve portions of the Common Elements for use for a specified period of time. Each Owner or Occupant shall assume, on behalf of himself and any guests, 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.

(9) Impairment of Units and Easements. No person shall do any act or work that will impair the structural soundness or integrity of another Unit or the Common Elements, nor impair any easement, nor do any act nor allow any condition to exist which will adversely affect the other Units or their Owners or Occupants.

(10) Nuisance. No person shall make use of any Unit or any portion of the Condominium in any way or for any purpose which may endanger the health or unreasonably annoy or disturb other Owners or occupants of any Unit, or which constitutes, in the Board's opinion, a nuisance. No Owner or Occupant shall do, keep or store anything on the Condominium which would increase the rate of insurance on the Condominium, which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirements of any governmental body, or which would otherwise increase the Common Expenses, without the prior approval of the Board of Directors.

2288
BOOK

(11) Unsanitary or Unkempt Conditions. The pursuit of hobbies or other activities, such as, but not limited to, garage sales or the assembly and disassembly of mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Condominium.

488
PAGE

(12) Control Over Employees. No person other than such officers, directors or managing agent of the Association as the Board may authorize, shall direct, supervise, or in any manner attempt to assert any control over the Association's employees, if any.

(13) Window Treatments. No blinds, shades, screens, decorative panels, or other window treatments or coverings, except for draperies in or lined with white, off-white, or light beige, or vertical or horizontal blinds in white, off-white or light beige, shall be attached to, hung, or used in connection with any window or door in a Unit in such a manner as to be visible from outside of the Unit, without the Board's prior written consent. Any type of reflective film or coating of any window, glass door, or glazed surface of any structure visible from outside the Unit is prohibited.

(14) Noise. No Owner or Occupant of a Unit may use or allow the use of the Unit, the Common Elements or the Limited Common Elements between the hours of 11:00 p.m. and 7:30 a.m. in any manner which creates levels of noise that can be heard by persons in another Unit or that, in the opinion of the Board, interferes with the rights, comfort or convenience of the other Owners or Occupants.

(15) Firearms and Fireworks. The display or discharge of firearms, fireworks or other projectiles on the Common Elements is prohibited, except that the display of lawful firearms on the Common Elements is permitted for the limited purpose of transporting the firearms across the 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. Section 25-10-1, as amended.

(16) Parking. Owner or Occupant shall be entitled to a single designated or reserved parking space to be assigned by the Board of Directors, in their sole discretion. No Owner or Occupant may keep or bring onto the Condominium more than two vehicles

per Unit at any time without prior written consent of the Board of Directors; provided, however, this provision shall not prohibit an Owner or Occupant from having guests or service vehicles park in visitor parking areas on the Condominium. Vehicles shall be parked only in designated parking spaces.

Disabled and stored vehicles are prohibited from being parked on the Condominium. Boats, boat trailers, trucks with a load capacity of one ton or more, full-size vans, recreational vehicles (RV's and motor homes), motorcycles, mopeds, golf carts, vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors are also prohibited from being parked on the Condominium, except in garages. 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, that no such vehicle shall be authorized to remain on the Common Elements overnight or for any other purpose without the written consent of the Board.

For purposes of this subparagraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Condominium for 21 consecutive days or longer without the prior written permission of the Board of Directors.

If any vehicle is parked on any portion of the Condominium in violation of this subparagraph (16) or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 24 hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity which will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If 24 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within 6 months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked anywhere other than designated parking areas or in a fire lane, is blocking another vehicle, is obstructing the flow of traffic, is parked in a space which has been assigned as a Limited Common Element to another Unit, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance 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 of Directors may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

(17) Abandoned Personal Property. Personal property, other than an automobile as provided for in subparagraph (16) of this paragraph, is prohibited from being stored, kept, or allowed to remain for a period of more than 24 hours upon any portion of the

228B
BOOK

489
PAGE

Common Elements other than on a Limited Common Element except as the Board may approve. The Board may remove and either discard or store any such personal property in a location which the Board may determine in its discretion. Prior to taking any such action, the Board shall place a notice on the personal property and/or on the door of the owner's Unit, if known, specifying the nature of the violation and stating that after two days the property may be removed and either discarded or stored. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation. If two days after such notice the violation continues or thereafter occurs again within six months of such notice, the personal property may be removed in accordance with the original notice, without further notice to the owner or user of the personal property. Notwithstanding anything to the contrary, the Board, in its discretion, may determine that an emergency situation exists, and the Board may cause the personal property abandoned or stored in violation of this subparagraph to be removed and either discarded or stored in a location which the Board may determine; provided, however, the Board shall give to the Owner, if known, notice of the removal of the property and the location of the personal property within three days after the personal property is removed.

228B
BOOK

490
PAGE

If personal property is removed 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 resulting from the removal 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 remove abandoned or improperly stored personal property, as set forth herein.

ARTICLE XV LEASING

A. Definition. "Leasing," for purposes of this Declaration, means regular, exclusive occupancy of a Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

B. Restrictions. Units may be leased only in their entirety, no fraction or portion consisting of less than the entire Unit may be leased. Limited Common Elements may not be leased separate from the Unit to which they are assigned. There shall be no subleasing of Units or assignment of leases unless prior written approval is obtained from the Board of Directors. Leases must be for an initial term of not less than six months; provided, however, that the Board shall have the power to allow leases for an initial term of less than six months, on such terms and conditions as the Board may establish, upon a showing by the Owner that such a lease is required to avoid undue hardship to the Owner.

C. Form. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board shall maintain in its files and, upon request, shall provide to any Owner a form which it deems acceptable. Within seven days after executing a lease agreement for the lease of a Unit, the Unit Owner shall provide the Board of Directors with a copy of the lease and the name of the lessee and all other people occupying the Unit. The Unit Owner must make available to the lessee copies of the Declaration, Bylaws, and the Association's rules and regulations.

228B
BOOK

D. Compliance with Rules. Every Owner shall cause all occupants of his or her Unit to comply with the Declaration, Bylaws, and the Association's rules, and shall be responsible for all violations and losses to the Common Elements caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and the Association rules.

ARTICLE XVI

491
PAGE

TRANSFER OF TITLE TO UNITS

A. Seller Notice. A Unit Owner intending to sell or otherwise transfer title to a Unit shall give written notice to the Board of Directors of such intention within seven days after entering into any agreement to sell or transfer the Unit. The Unit Owner shall furnish to the Board as part of the notice (a) the name and address of the intended grantee; and (b) such other information as the Board may reasonably require. This paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

B. Purchaser Notice. Within seven days after taking title to a Unit, the new Owner shall give written notice to the Board of Directors of his or her ownership of the Unit. Upon failure of a Owner to give the required notice within the seven-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 Association in determining his or her identity.

ARTICLE XVII

MAINTENANCE RESPONSIBILITY

A. Association Maintenance. Except as otherwise specifically provided in this Article XVII, the Association shall maintain and keep in good repair as a Common Expense, the "Area of Common Responsibility," which includes all Common Elements, Limited Common Elements, and the exterior surface of all improvements, whether located within the boundaries of a Unit or within the Limited Common Element assigned to a Unit. The Association's maintenance responsibilities shall include, but not be limited to:

- (1) the maintenance and repair of all the roofs and roof supports (including the roof joists and trusses, crossbeams, roof decking and underlaying, and shingles or other covering and surface materials);
- (2) the resurfacing, repair and replacement of paving, brick, walkways, floor coverings on the Common Elements, stairways, stoops, landings, railings, steps, balconies and balcony supports, and the exterior of parking garages and facilities, if any;
- (3) the maintenance, repair and replacement of gutters and down spouts (if any);
- (4) the maintenance, repair and replacement of signs and other markers;
- (5) the maintenance and repair of all common corridors and passageways, entrances to and exits from a building;
- (6) maintenance and repair of utility lines, pipes, wires, vents, ducts, flues, and conduits serving more than one Unit, or serving a particular Unit up to the point where the same intersect the boundaries of the Unit to the extent that such utility lines, pipes, wires, vents, ducts, flues, and conduits are not maintained by public, private or municipal utility companies;
- (7) maintenance, repair, painting and replacement of exterior walls and surfaces bounding the Units, including the brick, wood siding, stucco or other building material forming the exterior walls of the Units (but not including the wood, drywall, plaster or other building material on the Unit side of the perimetrical or vertical boundaries of the Unit);
- (8) maintenance, repair and upkeep of all grassed, landscaped, or natural areas, or lagoons contained in the Common Areas; and
- (9) all other functions necessary for the proper maintenance, upkeep, repair, replacement, rebuilding and operation of the Condominium.

The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors. The Association shall have the right, but not the obligation, to maintain and repair as a Common Expense any or all property owned by the Association but not submitted to this Declaration.

B. Association Liability. 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

228B
BOOK

492
PAGE

or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities.

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

D. Unit Owner Maintenance. Each Owner shall have the obligation to maintain and keep in good repair all portions of his or her Unit except those portions which are to be maintained, repaired or replaced by the Association under subparagraph (A) of this Article. In addition, each Owner shall be responsible for maintaining the Limited Common Elements assigned to such Owner's Unit in a neat, clean and orderly condition and shall not allow any unsanitary or dangerous condition to exist in or on such Limited Common Elements. The responsibility of the Unit Owner shall include, but not be limited to:

- (1) the maintenance, repair and replacement of all finishes, fixtures and equipment installed in such Owner's Unit;
- (2) the wood, drywall, plaster, or other building material comprising the unfinished surfaces of the walls and ceilings of the Unit;
- (3) the maintenance, repair and replacement of the heating, ventilation, and air conditioning unit serving a Unit;
- (4) the maintenance, repair and replacement of windows and window frames, and doors, door frames and hardware of a Unit;
- (5) all utility lines, pipes, wires, vents, ducts, flues, conduits or systems which serve only that Unit, to the extent that they lie within the perimeter boundaries of the Unit.
- (6) the maintenance and repair of those portions of the heating and air conditioning systems serving a Unit which serve only that Unit or are located within the Unit itself shall be the responsibility of the Unit Owner.

E. Alterations. An Owner shall not be permitted to make any alterations in the portions of the Unit which are to be maintained by the Association, nor do anything with respect to the Unit which would or might jeopardize or impair the safety or soundness of any Unit without first obtaining the written consent of the Board of Directors and all Unit Owners and Mortgagees of the Units affected, nor impair any existing easement without first obtaining written consent of the Association and of the Unit Owner or Owners and their Mortgagees for whose benefit such easement exists.

228B
BOOK

493
PAGE

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

Unless the Board of Directors determines that an emergency exists, the Owner shall have 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 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.

2288
BUUM

494
PAGE

G. Measures Related to Insurance Coverage:

(1) The Board of Directors, upon resolution, shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Condominium which are the maintenance responsibility of the Unit Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Condominium, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all Owners to turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes; requiring Owners to install smoke detectors; 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 five hundred (\$500.00) dollars per Unit in any 12 month period.

(2) In addition to, and not in limitation of, any other rights the Association may have, if any Unit Owner does not comply with any reasonable requirement made by the Board of Directors pursuant to subparagraph (F) above, the Association, upon 15 days' written notice (during which period the Unit Owner may perform the required act or work without further liability), may perform such required act or work at the Unit Owner's sole cost. Such cost shall be an assessment and a lien against the Unit as provided herein. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to this subparagraph, 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.

H. Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board of Directors to another. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this paragraph. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

ARTICLE XVIII MORTGAGEE RIGHTS

228B
BOOK

A. Mortgagee or Unit Owner Consent. Unless at least two-thirds (2/3) of the first Mortgagees give their consent, the Association or the membership shall not:

495
PAGE

- (1) by act or omission seek to abandon or terminate the Condominium;
- (2) 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;
- (3) 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
- (4) 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 Unit Owners where a larger percentage vote is otherwise required by the Act or the Condominium Instruments for any of the actions contained in this paragraph.

B. Title by Foreclosure. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the

passage of title, including, but not limited to, all charges for the month in which title is passed.

C. Notice. Upon written request to the Association, identifying the name and address of the holder and the Unit number or address, any Eligible Mortgagee will be entitled to timely written notice of:

- (1) 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 Mortgagee;
- (2) 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 Mortgagee which remains unsatisfied for a period of 60 days, and any default in the performance by an individual Unit Owner of any other obligation under the Condominium Instruments which is not cured within 60 days;
- (3) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (4) any proposed action which would require the consent of a specified percentage of Eligible Mortgagees, as specified herein.

D. Mortgagee Consent. In addition to the approval of Owners required under Article XXV, the approval of Eligible Mortgagees holding Mortgages on at least 51 % of the Units that are subject to a Mortgage held by an Eligible Mortgagee shall be required to materially amend or add any provision to the Declaration, Bylaws, or Articles of Incorporation governing any of the following:

- (1) voting rights;
- (2) increases in assessments or limitations on such increases, assessment liens, or the priority of such liens;
- (3) reductions in reserves for maintenance, repair, and replacement of the Common Elements;
- (4) responsibility for maintenance and repairs;
- (5) reallocation of interests in the Common Elements or Limited Common Elements, or rights to their use;
- (6) redefinition of Unit boundaries;
- (7) convertibility of Units into Common Elements or vice versa;

228B

496
PAGE

- (8) expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property from the Condominium;
- (9) hazard insurance or fidelity bond requirements;
- (10) imposition of any new restriction on leasing of Units;
- (11) imposition of any new restriction on the right of an Owner to sell, transfer, or otherwise convey such Owner's Unit
- (12) restoration or repair of the Condominium after damage or partial condemnation;
- (13) any provisions that are for the express benefit of Mortgage holders, guarantors, or insurers.
- E. Condemnation or Casualty. To the extent not inconsistent with Georgia law, any election to terminate the legal status of the Condominium:
- (1) after substantial destruction or condemnation occurs shall require the approval of the Eligible Mortgages holding first Mortgages on Units allocated at least 51% of the votes of Units subject to Mortgages held by Eligible Mortgages; and
- (2) otherwise shall require the approval of the Eligible Mortgages holding first Mortgages on Units allocated at least 67% of the votes of Units subject to Mortgages held by Eligible Mortgages.
- F. Identity of Mortgage. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.
- G. Implied Consent. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 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.
- H. Financial Information. 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.
- I. Mortgagee Title Rights. Notwithstanding anything to the contrary herein contained, the provisions of Articles XV and XVI governing sales and leases shall not apply to impair the right of any first Mortgagee to:

228B

497

PAGE

- (1) foreclose or take title to a Unit pursuant to remedies contained in its Mortgage; or
- (2) take a deed or assignment in lieu of foreclosure; or
- (3) sell, lease, or otherwise dispose of a Unit acquired by the Mortgagee.

ARTICLE XIX
DECLARANT RIGHTS

A. Rights of Declarant. Notwithstanding anything to the contrary contained elsewhere in this Declaration, any other Condominium Instrument, or the Articles of Incorporation, in accordance with the Act and this Declaration, Declarant shall have the following rights:

(1) Development and Sale Right. Declarant hereby reserves for itself, its affiliates, and their duly authorized agents, representatives, and employees, an easement over, under, across, and to the Condominium for the purpose of construction and improvement of Units, Common Elements, Limited Common Elements, and common facilities, provision of warranty services to Owners, maintenance of sales or leasing offices, management offices, signs, and models on the Condominium, and carrying on sales and marketing activities in connection with the Condominium for so long as Declarant owns any Unit in the Condominium, unless sooner relinquished in writing signed by Declarant. Declarant may maintain one or more offices and models on the Common Elements or in Units which Declarant owns, but only in connection with the management, sale, or rental of Units in the Condominium. There shall be no limit on number, size, location, or relocation of such offices and models. This subparagraph shall not be amended, nor shall the rights of Declarant or its affiliates hereunder be further restricted, without the prior written consent of Declarant.

(2) Development of Adjacent Property. Declarant hereby reserves for itself, its affiliates, and their duly authorized agents, representatives, and employees, an easement over, under, across, and to the Condominium for the purpose of enjoyment, use, access and development of real property adjacent to the Condominium. This easement includes, but is not limited to, the right of ingress and egress over the Condominium for construction of roads and for connecting and installing utilities on such property.

(3) Right to Appoint Association's Directors and Officers. Declarant shall have the right to appoint and remove the members of the Board of Directors and officers of the Association as provided in Articles and Bylaws until the first to occur of the following:

- (a) 60 days after 80% of the maximum number of Units permitted pursuant to Article IV have been conveyed to Persons other than Declarant or a Person or Persons constituting the Declarant;
- (b) seven years after the date of recording of the Declaration; or
- (c) the surrender by Declarant of such right by amendment to this Declaration executed and recorded by Declarant.
- (4) Sales and Leases. Notwithstanding anything to the contrary contained herein, Declarant and its affiliates shall have the right to sell or lease Units and to erect and maintain signs to facilitate such sales or leases as they, in their sole discretion, deem appropriate, and shall not be required to comply with the provisions of this Declaration or any Association rules and regulations regarding signs, sales, and leases.
- (5) Unsold Units. Declarant shall enjoy the rights and fulfill the duties of an Owner with respect to any unsold Units which it owns.

ARTICLE XX
EXPANSION OPTION

A. Right to Expand. The Declarant expressly reserves the option and right, but not the obligation, to expand the Condominium; and, subject to this Declaration and the Act, to submit to the Condominium all or any portion of the real property described on Exhibit "B" (the "Additional Property") attached hereto and by this reference incorporated herein, including any improvements thereon. Except as contained in this Section, there are no limitations upon this option to expand.

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

(2) This project shall be developed in phases and the boundaries of the property, to be included in each phase following the initial phase shall be determined by amendments to this Declaration made by the Declarant as the Condominium is expanded and phases are determined. The Additional Property within any such phase may be added as a whole at one time or in one or more portions at different times, or it may never be added, and there are no limitations upon the order of addition or boundaries thereof. The real property submitted to the Condominium need not be

contiguous and the exercise of the option as to any portion of the Additional Property shall not bar the further exercise of the option as to any other portions of the Additional Property.

(3) There are no limitations on the locations or dimensions of improvements to be located on the Additional Property.

(4) The maximum number of Units that may be created on the Additional Property is sixty-four (64).

(5) The Additional Property, when and if added to the Condominium, shall be subject to the use restrictions contained in this Declaration or subsequently promulgated in accordance with the terms of this Declaration. Accordingly, any structure erected on the Additional Property, when and if added to the Condominium, will be restricted exclusively to residential use to the same extent as all other structures comprising the Condominium.

(6) Any structures and improvements placed, constructed, replaced, or reconstructed on the Additional Property, if added to the Condominium, will be substantially complete, compatible with and the same as or similar to the existing Units in the Condominium as to quality of construction and architectural style. No assurances are made with respect to materials to be used in improvements placed on the Additional Property.

(7) No assurances are made as to what, if any, further improvements will be made by Declarant on any portion of the Additional Property.

(8) No assurances are made that Units constructed on the Additional Property will be substantially identical to those in the Condominium.

(9) The Declarant shall have the unlimited right to create Limited Common Elements within any portion of the Additional Property or to designate Common Elements therein which may subsequently be assigned as Limited Common Elements.

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

(11) This option to expand the Condominium shall be exercisable by the Declarant in its sole discretion and the consent of Unit Owners shall not be required. Declarant shall have the unilateral right to reallocate percentages of undivided interests in the Common Elements, liability for payment of common expenses, and allocation of votes in the Association, all to be done in accordance with the limitations above described. The Declarant shall exercise the option to expand the Condominium by adopting, executing,

and recording an amendment to this Declaration and by recording such plats, certificates, and plans as required by the Act. If at the time of such annexation HUD or VA is insuring or guaranteeing any Mortgage on a Unit, the written consent of such entity to the annexation shall be required.

ARTICLE XXI

SECURITY AND SAFETY

A. Security and Safety. Each Owner and Occupant, for himself or herself and his or her Occupants, family, guests, licensees, and invitees, acknowledges and agrees that the Association is not an insurer or guarantor of security and shall have no duty to protect persons or personal property on the Condominium from loss, damage, or injury arising from the unlawful or negligent acts of third persons. It shall be the sole responsibility of each Owner and Occupant and each other person entering upon the Condominium to protect his or her own person and property. Neither the Association, its Board of Directors, managing agent, employees, nor the Declarant shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken.

ARTICLE XXII

EMINENT DOMAIN

A. Eminent Domain. In the event of a taking by condemnation or by eminent domain, the provisions of the Act shall govern; provided, however, that any proceeds received for a taking of the Common Elements (other than Limited Common Elements) by condemnation or eminent domain shall, at the Board's option, 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 Eligible Mortgagee shall be entitled to written notice of any such condemnation proceedings, and nothing in the Condominium Instruments shall be construed to give a priority to any Unit Owner in the distribution of proceeds to such Unit.

ARTICLE XXIII

EASEMENTS

A. Over Common Elements. Each Unit Owner and Occupant shall have a right and easement of use and enjoyment in and to the Common Elements (including a perpetual, unrestricted right of access, ingress and egress to and from his or her Unit over those portions of the Condominium designated for such purpose), and such easement shall be appurtenant to and shall pass with the title to such Unit, subject to the rights of the Unit Owners to the exclusive use of the Limited Common Elements assigned to their respective Units and to the

228B
BOOK

501
PAGE

right of the Association to control the use and enjoyment of the Common Elements as provided by the terms of this Declaration.

B. For Access, Drainage and Utilities. The Declarant hereby reserves for itself, its affiliates, and the Association, their grantees, successors, and assigns, easements over the Common Elements for installation, maintenance and repair of roads, access ways, drainage facilities and utilities to serve the Condominium and the Additional Property. In addition, each Owner, by accepting any interest in a Unit, is deemed to appoint the Association as such Owner's attorney-in-fact for the purpose of granting permits, licenses and easements over the Common Elements for roads, access ways, drainage facilities, and utilities and other purposes which the Board or Declarant may deem necessary or appropriate to the operation of the Condominium or the development of the Additional Property.

228B
BOOK

ARTICLE XXIV

GENERAL PROVISIONS

502
PAGE

A. Compliance and Enforcement. Each Owner shall comply, and shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply, with all provisions of the Condominium Instruments and the Association's rules and regulations. 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 in the event of any such person's violation of the Condominium Instruments, the Association may take enforcement action as authorized in this Declaration, the Bylaws, and the Act against the Owner as if the Owner committed the violation in conjunction with such person. An aggrieved Owner shall also have standing to enforce the Condominium Instruments and the Association rules and regulations by action at law or in equity.

B. Dispute Resolution. Prior to filing a lawsuit against the Association, the Board, or any officer, director, or property manager of the Association, a Unit Owner or Occupant must request and attend a hearing with the Board of Directors. Any such request shall be in writing and shall be personally delivered to any member of the Board of Directors or the property manager, if any, of the Association. The Owner or Occupant shall, in such request and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than 7 nor more than 21 days from the date of receipt of the request.

C. No Discrimination. No action shall be taken by the Association or the Board of Directors which would discriminate against any person on the basis of race, creed, color, national origin, religion, sex, familial status or handicap.

D. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

E. 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.

ARTICLE XXV

AMENDMENTS

A. Right to Amend. Except where a higher vote is required for action under any other provisions of the 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 (as provided for in the Bylaws), or any combination of affirmative vote and written consent of the members of the Association holding at least 67% of the total eligible vote of the Association. In addition, the approval of Eligible Mortgages shall be obtained to the extent required under Article XVIII. 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 Chatham County, Georgia land records.

B. Challenge to Amendment. Any action to challenge the validity of an amendment adopted under this paragraph must be brought within one year of the effective date of such amendment. No action to challenge such amendment may be brought after such time.

ARTICLE XXVI

PREPARER

A. This Declaration was prepared by Robert B. Brannen, Jr., Esq., Inglesby, Falligant, Horne, Courington & Chisholm, P.C., 17 West McDonough Street, Savannah, Georgia, 31401.

228B
BOOK

503
PAGE

IN WITNESS WHEREOF, the Declarant has executed this Declaration on the day and year above first written.

Signed, sealed and delivered this 25th day of June, 2001 in the presence of:

Declarant:

BROCKINGTON SQUARE, LLC, a
Georgia limited liability company

By: [Signature]

H. Ronald Freeman, as Manager

By: [Signature]
Jayes A. Spies, as Manager

[Signature]
Unofficial Witness

Notary Public

ROBERT B. BRANNEN, JR.
Notary Public, Chatham County, Georgia
~~My Commission Expires March 13, 2001~~

[NOTARIAL SEAL]



BOOK 228B

PAGE 504

EXHIBIT A
Submitted Property

Phase I

All those certain lots, tracts or parcels of land situate, lying and being in the City of Savannah, County of Chatham, and State of Georgia, shown as **PHASE 1 OF A RECOMBINATION OF LOT 21, SHANGRI-LA SUBDIVISION**, on that survey entitled "Recombination Plat of Lot 21, Shangri-La Subdivision, known as Brockington Square, 6th G. M. District, Chatham County, Georgia", dated March 15, 2001, prepared by Terry Mack Coleman, G.R.L.S. No. 2486 for First City Properties and to be recorded in the Chatham County, Georgia records, said plat being incorporated herein and made a part hereof by this reference. Said property is more particularly described as follows:

Beginning at the intersection of the northern boundary line of Tibet Avenue (a 60' right of way) and the western boundary line of Leeds Gate Road (right of way varies) at an iron rod set, said point being the **TRUE POINT OF BEGINNING** and proceed in a westerly direction along the right of way of Tibet Avenue N66°33'18"W a distance of 386.45 feet to a concrete monument found; thence proceed in a northerly direction N15°51'00"E a distance of 144.04 feet to an iron rod set; thence proceed S74°09'00"E a distance of 129.61 feet to an iron rod set; thence proceed S15°32'53"W a distance of 109.59 feet to an iron rod set; thence proceed S74°27'07"E a distance of 85.50 feet to an iron rod set; thence proceed N15°32'53"E a distance of 43.01 feet to an iron rod set; thence proceed S74°27'07"E a distance of 48.88 feet to an iron rod set; thence proceed N15°32'53"E a distance of 30.63 feet to an iron rod set; thence proceed S74°27'07"E a distance of 52.00 feet to an iron rod set; thence proceed S15°32'53"W a distance of 3.76 feet to an iron rod set; thence proceed S74°27'07"E a distance of 67.52 feet to an iron rod set on the western right of way line of Leeds Gate Road; thence proceed S16°05'11"W a distance of 156.74 feet to an iron rod set, said point being the **TRUE POINT OF BEGINNING**.

Said property is a portion of that property conveyed to Brockington Square, LLC, by Warranty Deed from James R. Adams, dated June 5, 2000, and recorded in Book 212-V, page 476, Chatham County, Georgia records, and by Warranty Deed from WELLS Church Extension Fund, Inc., dated April 16, 1999, and recorded in Book 202-T page 346, Chatham County, Georgia records.

TOGETHER WITH easement rights contained in that Declaration of Reciprocal Easements by Brockington Square, LLC, dated March 21, 2001, and recorded in Deed Book 220-C, page 643, Chatham County, Georgia records.

228B
BURN

505
TAGR

EXHIBIT B
Additional Property

Phase 2

All those certain lots, tracts or parcels of land situate, lying and being in the City of Savannah, County of Chatham, and State of Georgia, shown as **PHASE 2 OF A RECOMBINATION OF LOT 21, SHANGRI-LA SUBDIVISION**, on that survey entitled "Recombination Plat of Lot 21, Shangri-La Subdivision, known as Brockington Square, 6th G. M. District, Chatham County, Georgia", dated March 15, 2001, prepared by Terry Mack Coleman, G.R.L.S. No. 2486 for First City Properties and to be recorded in the Chatham County, Georgia records, said plat being incorporated herein and made a part hereof by this reference. Said property is more particularly described as follows:

228B
BOOK

Commence at the intersection of the northern boundary line of Tibet Avenue (a 60' right of way) and the western boundary line of Leeds Gate Road (right of way varies) at an iron rod set and proceed in a westerly direction along the right of way of Tibet Avenue, N66°33'18"W a distance of 386.45 feet to a concrete monument found; thence proceed N15°51'00"E a distance of 144.04 feet to an iron rod set, said point being the **TRUE POINT OF BEGINNING**; thence continue N15°51'00"E a distance of 130.67 feet to an iron rod set; thence proceed S74°09'00"E a distance of 129.61 feet to an iron rod set; thence proceed N15°51'00"E a distance of 3.00 feet to an iron rod set; thence proceed S74°09'00"E a distance of 125.17 feet to an iron rod set; thence proceed S15°32'53"W a distance of 168.96 feet to an iron rod set; thence proceed S74°27'07"E a distance of 8.50 feet to an iron rod set; thence proceed S15°32'53"E a distance of 30.63 feet to an iron rod set; thence proceed N74°27'07"W a distance of 48.88 feet to an iron rod set; thence proceed S15°32'53"W a distance of 43.01 feet to an iron rod set; thence proceed N74°27'07"W a distance of 85.50 feet to an iron rod set; thence proceed N15°32'53"E a distance of 109.59 feet to an iron rod set; thence proceed N74°09'00"W a distance of 129.61 feet to an iron rod set, said point being the **TRUE POINT OF BEGINNING**.

506
PAGE

Said property is a portion of that property conveyed to Brockington Square, LLC, by Warranty Deed from James R. Adams, dated June 5, 2000, and recorded in Book 212-V, page 476, Chatham County, Georgia records, and by Warranty Deed from WELLS Church Extension Fund, Inc., dated April 16, 1999, and recorded in Book 202-T page 346, Chatham County, Georgia records.

TOGETHER WITH easement rights contained in that Declaration of Reciprocal Easements by Brockington Square, LLC, dated March 21, 2001, and recorded in Deed Book 220-C, page 643, Chatham County, Georgia records.

EXHIBIT B continued

Future Development Remaining Portion of Lot 21

(Future Development Tract)

All those certain lots, tracts or parcels of land situate, lying and being in the City of Savannah, County of Chatham, and State of Georgia, shown as FUTURE DEVELOPMENT REMAINING PORTION OF LOT 21 OF A RECOMBINATION OF LOT 21, SHANGRI-LA SUBDIVISION, on that survey entitled "Recombination Plat of Lot 21, Shangri-La Subdivision, known as Brockington Square, 6th G. M. District, Chatham County, Georgia", dated March 15, 2001, prepared by Terry Mack Coleman, G.R.L.S. No. 2486 for First City Properties and to be recorded in the Chatham County, Georgia records, said plat being incorporated herein and made a part hereof by this reference. Said property is more particularly described as follows:

228B
BOOK

Commence at the intersection of the northern boundary line of Tibet Avenue (a 60' right of way) and the western boundary line of Leeds Gate Road (right of way varies) at an iron rod set and proceed in a westerly direction along the right of way of Tibet Avenue, N66°33'18"W a distance of 386.45 feet to a concrete monument found; thence proceed in a northerly direction N15°51'00"E a distance of 274.71 feet to an iron rod set, said point being the TRUE POINT OF BEGINNING; thence continue N15°51'00"E a distance of 194.77 feet to an iron rod set; thence S65°41'25"E a distance of 389.43 feet to an iron rod set on the western boundary line of the right of way of Leeds Gate Road; thence S16°05'11"W a distance of 359.53 feet to an iron rod set; thence proceed N74°27'07"W a distance of 67.52 feet to an iron rod set; thence proceed N15°32'53"E a distance of 3.76 feet to an iron rod set; thence proceed N74°27'07"W a distance of 60.50 feet to an iron rod set; thence proceed N15°32'53"E a distance of 168.96 feet to an iron rod set; thence proceed N74°09'00"W a distance of 125.17 feet to an iron rod set; thence proceed S15°51'00"W a distance of 3.00 feet to an iron rod set; thence N74°09'00"W a distance of 129.61 to an iron rod set, said point being the TRUE POINT OF BEGINNING.

507
PAGE

Said property is a portion of that property conveyed to Brockington Square, LLC, by Warranty Deed from James R. Adams, dated June 5, 2000, and recorded in Book 212-V, page 476, Chatham County, Georgia records, and by Warranty Deed from WELLS Church Extension Fund, Inc., dated April 16, 1999, and recorded in Book 202-T page 346, Chatham County, Georgia records.

TOGETHER WITH easement rights contained in that Declaration of Reciprocal Easements by Brockington Square, LLC, dated March 21, 2001, and recorded in Deed Book 220-C, page 643, Chatham County, Georgia records.

EXHIBIT "C"

PLAT AND PLANS

The Plans shall refer to those Plans for Brockington Square, a Condominium, prepared by Richard R. Rekau, Georgia Registered Architect, dated October 29, 2001, consisting of First Floor Plan Two Bedroom and Second Floor Plan Two Bedroom, and being recorded in Condominium Plan Book 1, page 156, Chatham County, Georgia records.

The Plat shall refer to that Plat for Brockington Square, a Condominium, prepared by Terry Mack Coleman, Georgia Registered Land Surveyor No. 2486, dated July 7, 2001, and being recorded in Condominium Plan Book 1, page 156, Chatham County, Georgia records