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DECLARATION OF CONDOMINIUM

FOR

POWERS FERRY GREEN, A CONDOMINIUM

This Declaration submits certain real property located in Land Lot 859 of the 17th District, 2nd Section of Cobb County, Georgia to the condominium laws of the State of Georgia, as provided by the Georgia Condominium Act, O.C.G.A. Sec. 44-3-70, et seq. (Georgia Laws 1975, pages 609-671, as amended).

Site Plan for Powers Ferry Green, a Condominium, recorded in Condominium Plat Book 4, Page 190, Cobb County, Georgia Records, and Plans recorded in Condominium Floor Plan Cabinet No. \_\_\_\_\_, Folder No. 85-02, aforesaid records.

GEORGIA, COBB COUNTY, OFFICE OF SUPERIOR COURT CLERK:  
FILED 7-16 1985, 4:45 P.M. REC 7-16 85  
DEED BOOK 3569 PAGE 1 JAY C. STEPHENSON, CLERK

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LIST OF EXHIBITS

- Exhibit "A" - Legal Description of Property
- Exhibit "B" - Legal Description of Additional Property
- Exhibit "C" - Listing of Unit Numbers and Undivided  
Interests in Common Elements, Liabilities  
for Assessments and Votes of Condominium  
Units

DECLARATION OF CONDOMINIUM  
FOR  
POWERS FERRY GREEN, A CONDOMINIUM

THIS DECLARATION, made this 15th day of July, 1985, by BPI CONSTRUCTION CO., a Georgia corporation, (hereinafter referred to as "Declarant"):

W I T N E S S E T H:

WHEREAS, Declarant is the owner of certain real property which is located in Cobb County, Georgia, and described in Exhibit "A" attached hereto and by reference made a part hereof; and

WHEREAS, Declarant has constructed residential dwellings and other improvements on said real property and desires to submit said real property, including the improvements located thereon, to the provisions of the Georgia Condominium Act and to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" hereof, including the improvements located thereon, is hereby submitted and made subject to the form of ownership set forth in the Georgia Condominium Act, and said property is hereby made subject to this Declaration. By virtue of the recording of this Declaration, said property shall be owned, held, transferred, sold, conveyed, used, occupied and mortgaged or otherwise encumbered subject to the provisions of the Georgia Condominium Act and this Declaration, and every grantee of any interest, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall take subject to the provisions of the Georgia Condominium Act and this Declaration and shall be deemed to have assented to the same.

ARTICLE I

STATUTORY PROVISIONS AND DEFINITIONS

1.01 Statutory Provisions. This Declaration is made pursuant to the Georgia Condominium Act, Official Code of Ga. Ann., Title 44, Chapter 3, Article 3 (Michie 1982), Ga. Code Ann., Chapter 85-16E (Harrison 1977), (Georgia Laws 1975, No. 463, pages 609-671, as amended).

1.02 Definitions. Words used in this Declaration, which are defined in the Georgia Condominium Act, shall have the same meaning as set forth therein, unless the context shall prohibit or otherwise require or unless such words are otherwise defined by this Declaration. When used in this Declaration, the following words shall have the following meanings, whether or not capitalized, unless the context shall prohibit or otherwise require, and all definitions shall be applicable to the singular

and plural forms of such terms:

(a) "Act" shall mean and refer to the Georgia Condominium Act, Official Code of Ga. Ann., Title 44, Chapter 3, Article 3 (Michie, 1982), Georgia Code Annotated, Chapter 85-16E (Harrison, 1977), (Georgia Laws 1975, No. 463, pages 609-671, as amended), as the same may be hereafter be supplemented, amended or modified from time to time.

(b) "Additional Property" shall mean and refer to the real property described on Exhibit "B" attached hereto and made a part hereof.

(c) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of Powers Ferry Green Condominium Association, Inc.

(d) "Assessment" shall mean and refer to a Unit Owner's share of the common expenses from time to time assessed against an owner by the Association in the manner herein provided.

(e) "Association" shall mean and refer to Powers Ferry Green Condominium Association, Inc., a nonprofit Georgia corporation, its successors and assigns.

(f) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

(g) "The By-Laws of Powers Ferry Green Condominium Association, Inc." or "the By-Laws" shall mean and refer to those by-laws governing the administration and operation of the Association.

(h) "Common Elements" shall mean and refer to all portions of the Property other than the Units, including limited common elements, and all installations, fixtures, improvements or personalty located on such portions of the Property.

(i) "Common Expense Fund" shall mean and refer to the funds of the Association, from assessments and other sources, used for the payment of the common expenses of the Association.

(j) "Common Expenses" shall mean and refer to all expenditures made or liabilities incurred by or on behalf of the Association, together with all payments or obligations for the creation or maintenance of reserve accounts, pursuant to the provisions of the Act or this Declaration.

(k) "Condominium" shall mean and refer to the Property and all improvements located thereon submitted to the Act by the condominium instruments and known as Powers Ferry Green, a Condominium.

(l) "Condominium Instruments" shall mean and refer to the following documents and all amendments thereto: (i) this Declaration of Condominium for Powers Ferry Green, a Condominium, all exhibits and schedules attached hereto and all amendments hereof, and (ii) the Site Plan, the Plans and related certifications and all amendments thereof.

(m) "Condominium Unit" shall mean and refer to the Unit, together with the undivided interest in the common elements appurtenant thereto.

(n) "Construction Fund" shall mean and refer to proceeds of insurance and funds collected by the Association from assessments to pay for the cost of repair or reconstruction caused by damage or destruction to the Property.

(o) "Declarant" shall mean and refer to the owner of the Property who has executed this Declarant, or any successor in title thereto who comes to stand in the same relation to the Condominium as such owner, or any party which acquires ownership of the Property or that portion thereof then owned by Declarant pursuant to foreclosure of a deed to secure debt or other security instrument encumbering Declarant's interest therein.

(p) "Declaration" shall mean and refer to this Declaration of Condominium for Powers Ferry Green, a Condominium, and all amendments hereof filed for record on the records of Cobb County, Georgia.

(q) "Director" shall mean and refer to a member of the Board of Directors.

(r) "Foreclosure" shall mean and refer to, without limitation, the judicial foreclosure of a mortgage or the exercise of a power of sale contained in any mortgage.

(s) "Lease" shall mean and refer to any lease, sublease or rental contract, whether oral or written.

(t) "Limited Common Element" shall mean and refer to a portion of the common elements reserved for the exclusive use of one or more, but less than all, of the Units.

(u) "Majority" shall mean and refer to more than fifty percent (50%) of the votes assigned to the Condominium Units as provided in this Declaration or more than fifty percent (50%) of the directors or members of committees appointed by the Board of Directors, as may be applicable.

(v) "Mortgage" shall mean and refer to a mortgage, deed to secure debt, deed of trust or other instrument conveying a lien upon or security title to a Condominium Unit or any portion of the Property.

(w) "Mortgagee" shall mean and refer to the holder of

a mortgage.

(x) "Occupant" shall mean and refer to any person, including without limitation any Owner, guest, invitee, tenant, lessee or family member of an Owner, occupying or otherwise using a Condominium Unit.

(y) "Officer" shall mean and refer to an officer of the Association.

(z) "Owner" shall mean and refer to one or more persons, including Declarant, who or which owns fee simple title to any Condominium Unit, excluding, however, the holder of a mortgage or other holder of an interest merely as security for the performance of an obligation.

(aa) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(bb) "Plans" shall mean and refer to those "Plans for Powers Ferry Green, A Condominium," prepared by Taylor & Williams, Architects, P.C., dated July 15, 1985, which are filed for record, together with this Declaration, on the records of Cobb County, Georgia and any revision of any of such plans as may be filed for record on the records of Cobb County, Georgia, from time to time.

(cc) "Property," unless the context should otherwise require, shall mean and refer to that tract or parcel of land described in Exhibit "A" hereof and all improvements thereon.

(dd) "Record" or "file for record" shall mean and refer to filing for record with the Clerk of the Superior Court of Cobb County, Georgia.

(ee) "Powers Ferry Green, a Condominium" is the name of the Condominium and shall mean and refer to that certain residential community located in Cobb County, Georgia and established pursuant to the condominium instruments.

(ff) "Site Plan" shall mean and refer to that certain "As-Built Survey for Powers Ferry Green, a Condominium" prepared by Edward L. Anderson, Ga. Registered Land Surveyor, dated July 10, 1985, filed for record together with this Declaration on the condominium plat records of Cobb County, Georgia, and shall include any revisions of any of such plats or surveys as may be filed for record on the records of Cobb County, Georgia, from time to time.

(gg) "Unit" shall mean and refer to a portion of the Condominium intended for independent ownership and use, being a residential dwelling depicted on the Site Plan and the Plans and having the boundaries described in this Declaration, provided that if the context otherwise requires, the term "Unit" shall



also be deemed to include the undivided interest in the common elements appurtenant thereto.

(hh) "Unit Owner" shall mean and refer to an Owner.

(ii) "Vote" shall mean and refer to the vote in the Association to which each Unit Owner shall be entitled.

## ARTICLE II

### DESCRIPTION OF CONDOMINIUM

2.01 Property Submitted to Declaration. The Condominium is comprised of the Property, including the improvements located thereon. These improvements consist of twenty (20) residential dwellings, the Units, together with the driveways, parking area, retaining walls, tennis courts, utility systems, drainage facilities, swimming pool, deck space, fences, yards, walkways, patios, decks and other improvements serving such dwellings. The general area and location of the Units and other improvements on the Property and the dimensions of the Units are shown on the Site Plan and on the Plans, recorded together with this Declaration on the records of Cobb County, Georgia. Declarant reserves the right so long as Declarant owns any Condominium Unit to make improvements and changes to and to complete construction of all parts of the common elements and the Units owned by Declarant; provided that Declarant shall have no obligation to construct or complete any such facilities on the Property except as may be provided by the Act. Such improvements and changes to the Property made by Declarant shall be such improvements and changes as are contemplated by the Condominium Instruments or as may be otherwise permitted by the Act.

2.02 Units. Each Condominium Unit, including its undivided interest in the common elements as hereinafter specified and established, shall for all purposes constitute real property which may be owned in fee simple and which, subject to the provisions of the Georgia Condominium Act and this Declaration, may be conveyed, transferred and encumbered in the same manner as any other property. The ownership of each Condominium Unit shall include its appurtenant percentage or fraction of undivided interest in the common elements and voting weight assigned to the Unit for voting purposes. The undivided percentage or fraction of interest in the common elements appurtenant to each Condominium Unit is shown on Exhibit "C" attached hereto, and such undivided interest in the common elements shall not be altered except as expressly provided by the Act and the provisions of this Declaration permitted by the Act. Such undivided interest in the common elements shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument. The voting weight appurtenant to each Condominium Unit is weighted in accordance with the percentage interest for such Condominium Unit provided on Exhibit "C" attached, and the

Owner or Owners of a Condominium Unit shall have one vote for each Condominium Unit owned equal to the percentage interest for each such Condominium Unit. A Unit Owner shall automatically be a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor in title.

2.03 **Limited Common Elements.** Limited common elements shall not be construed or interpreted to be separate and apart from the common elements in general, being limited only with respect to the reserved use thereof to the Unit or Units served thereby. The limited common elements within the condominium may be reassigned at any time and from time to time, provided that any and all such reassignments shall be made in accordance with the procedures and provisions of the Act. The limited common elements which are located on the property and the Units to which the same are assigned are described as follows:

(a) The garage which is appurtenant to each Unit having a garage shall be a limited common element assigned to the Unit having direct access thereto. All of the garages located on the Property are shown and depicted on the Plans.

(b) The deck which is appurtenant to each Unit having a deck shall be a limited common element assigned to the Unit having direct access thereto; provided, however, that any portion of a deck which separates one deck from another deck shall be a limited common element assigned to both of the Units, the decks assigned to which are separated by such portion of such deck. All of the decks located on the Property are shown and depicted on the Plans.

(c) All portions of the common elements on which there is located any portion of the heating and air conditioning system exclusively serving a particular Unit or Units shall be a limited common element assigned to the Unit or Units which is or are exclusively served by such heating and air conditioning system.

(d) The hot water heater connected to the plumbing system serving a Unit but located outside of the boundary of such Unit shall be a limited common element assigned to the Unit to which it is connected.

(e) The parking area shall be a limited common element and each Unit shall have one parking space serving such Unit. Pursuant to and in accordance with Section 19(c) of the Act, the Association shall have the power from time to time to execute amendments to this Declaration assigning a specific parking space to each Unit.

2.04 **Unit Boundaries.** The perimetrical or vertical boundaries of each Unit are the vertical planes of the interior surfaces of the wood framing of the walls of the Unit, whether such walls are exterior walls or walls separating the Unit from other Units or the common elements, and the vertical planes of the exterior surfaces of windows and entry doors, including

sliding glass doors. Such perimetrical Unit boundaries include the sheet rock on the Unit side of said walls, with such framing being a part of the common elements, and are extended to their intersections with each other and the upper and lower horizontal plane of the upper surface of the concrete sub-floor (floor slab) or floor boards of such Unit, as the case may be, and the upper horizontal boundary of each Unit is the horizontal plane of the lower surfaces of the ceiling joists of the Unit, with such floor boards and framing being a part of the common elements. The upper and lower boundaries of each Unit include the wood, dry-wall, plaster or other material forming the ceiling or floor, as may be applicable, on the Unit side of such floor boards or framing, as the case may be, and extended to their intersections with the perimetrical boundaries of the Units. There shall be deemed to be included within the boundaries of each Unit all portions of the heating and air-conditioning system serving only that Unit, including compressors, pipes, wires, conduits and ducts, and all attachments to the exterior walls of the Unit, including but not limited to hardware, lighting fixtures, mailboxes, windows and window screens, which are a part thereof or which protrude beyond such boundaries. If any chutes, flues, ducts, conduits, wires, pipes or other apparatus lies partially within and partially outside of the designated boundaries of a Unit, any portions thereof which serve only that Unit shall be deemed a part of that Unit, while any portions thereof which serve more than one Unit or any portion of the common elements shall be deemed a part of the common elements. In interpreting deeds and plans, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between the boundaries shown on the plans or in the deed and those of the Unit. Units shall not be subdivided, and unless the relocation thereof is accomplished in strict accordance with the provisions of the Act and with the consent of Declarant, so long as Declarant owns a Condominium Unit, boundaries between adjoining Units shall remain as established in accordance with the Plans and shall not be relocated. If a Unit Owner acquires an adjoining Unit such Unit Owner shall have the right, (subject to prior written approval of Mortgagees of the Units involved) to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partitions may in whole or in part be part of the common elements, so long as no portion of any bearing wall or bearing column is materially weakened or removed and no portion of any common elements, other than that partition and any chutes, flues, ducts, conduits, wires or apparatus contained therein, which shall be relocated by such Unit Owner as such facilities serve another part of the Condominium, is damaged, destroyed, or endangered; such alterations permitted by this Section 2.04 shall not be deemed an alteration or relocation of boundaries between adjoining Units.

2.05 **Development of Additional Property.** Declarant hereby

reserves the option, to be exercised in its sole discretion, to submit the Additional Property to the provisions of this Declaration and thereby to cause the Additional Property to become part of the Condominium. This options may be exercised by Declarant in accordance with the following conditions and limitations, which are the only conditions and limitations on such option to add the Additional Property to the Condominium:

(a) The option may be exercised for a period of seven (7) years from the date of the filing of this Declaration on the records of Cobb County, Georgia; provided, however, that Declarant reserves the right to terminate such option at any time prior to the expiration of such seven (7) year period by executing and filing an instrument on the records of Cobb County, Georgia, evidencing such termination, and except for such termination by Declarant, no other circumstances will terminate such option prior to the expiration of such seven (7) year period. Notwithstanding the foregoing, Unit Owners of Condominium Units as to which two-thirds of the votes in the Association appertain, exclusive of any vote or votes appurtenant to any Condominium Unit or Units owned by Declarant, may consent to the extension of such option within one (1) year prior to the date upon which such option would have otherwise expired, provided that such extension is also approved by at least two-thirds of the holders of first mortgages on the Condominium Units. The right reserved by declarant to add the Additional Property to the Condominium shall in no way be construed to impose on Declarant any obligation to add the Additional Property or to develop any Units or other improvements thereon.

(b) The legal description of the Additional Property is set forth on Exhibit "B". The Additional Property has no horizontal boundaries, and the vertical boundaries are set forth in the legal description in Exhibit "B".

(c) If Additional Property is added to the Condominium, a maximum number of 36 Condominium Units may be developed thereon, so that the total number of Condominium Units comprising the Condominium shall not exceed 56.

(d) If the Additional Property is developed and added to the Condominium, there are no limitations with respect to the location of Units or the location of any other improvements that may be developed thereon.

(e) If Units are developed on the Additional Property and added to the Condominium, the Units located thereon will be restricted exclusively to residential use.

(f) If structures are developed on the Additional Property and added to the Condominium, such structures will be substantially compatible with the structures on the Property in terms of quality of construction, principal materials of construction and architectural style; however, no assurances are made that any Units or other structures which may be developed on the Additional Property will be substantially identical to the other structures located on the Property.

(g) If improvements are made to the Additional Property, the improvements to be made thereon shall be limited to buildings containing residential dwellings, street improvements, driveways, patios, decks, walkways, parking areas, utility

systems, drainage areas and facilities, but the foregoing shall not impose any obligation on Declarant to make any particular improvements to or on the Additional Property or any portion thereof.

(h) If Condominium Units are developed on the Additional Property, which is added to the Condominium, Declarant reserves the right to create certain limited common elements appertaining to any Units developed thereon and to designate common elements within the Additional Property which may subsequently be assigned as limited common elements, and there are no limitations on Declarant's right to create or designate limited common elements, as aforesaid, within the Additional Property, in terms of the types, sizes or number of such limited common elements or in any other respect.

(i) Should the option to add the Additional Property to the Condominium not be exercised within the term specified or be terminated by Declarant, such option shall in all respects expire and be of no further force or effect. In the event such option expires or is terminated, as aforesaid, Declarant shall not be obligated to impose on the Additional Property any covenants, conditions or restrictions the same as or similar to those contained herein or to develop the Additional Property in accordance with such covenants, conditions or restrictions.

The option reserved by this Section 2.05 may be exercised by Declarant only by the execution of an amendment to this Declaration, which shall be filed for record in the Office of the Clerk of Superior Court of Cobb County, Georgia, together with an as-built survey showing the Additional Property to be added, together with the structures located thereon, and plans showing the dimensions of such structures. Any such amendment shall expressly submit the Additional Property to all of the provisions of this Declaration, as may be amended, and upon the exercise, if any, of such option, the provisions of this Declaration shall then be understood and construed as embracing the Property and the Additional Property, together with all improvements located thereon. If Condominium Units are developed on the Additional Property which is added to the Condominium, therefrom and after the addition thereof to the Condominium:

(i) the undivided percentage interest in the common elements appertaining to each Unit in the Condominium and the liability for assessments of each Owner of a Unit, including the Units located on the Additional Property shall be altered based on the total number of Units in the Condominium, including the Units added to the Condominium, so that such undivided percentage interests and liabilities for assessments shall be weighted in accordance with the percentage interest in the common elements appertenant to each Condominium Unit and the total percentage interest for all Condominium Units shall equal 100%; and

(ii) the number of votes in the Association shall be increased from 20 by the number of Condominium Units located on the Additional Property, and each Condominium Unit, including the Condominium Units added to the Condominium, shall have one (1)

vote in the Association equal to the percentage interest in the common elements for such Condominium Unit.

Every purchaser of a Condominium Unit shall purchase such Condominium Unit and every mortgagee and lien holder holding an interest therein shall take title, or hold such interest with respect thereto, with notice of Declarant's plan of development of the Additional Property as herein set forth, and Declarant shall have and does hereby specifically reserve the right to add the Additional Property to the Condominium as herein provided, and with respect to each such Condominium Unit, convey to the purchaser thereof the title to the Unit and its appurtenant percentage of undivided interest in the common elements of the Condominium and voting weight which, in accordance with and subject to the terms, conditions and provisions of this Declaration, is to be conveyed to the purchaser thereof. Any provision in this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of development set forth in this Article II may not be abrogated, modified, rescinded, supplemented or amended in whole or in part without the written consent of Declarant.

### ARTICLE III

#### EASEMENTS

The easements described by this Article III from each Unit Owner to each other Unit Owner and to the Association and Declarant are hereby reserved and established.

3.01 Use and Enjoyment. Every Unit Owner, his family, tenants and guests, shall have a right and easement of use and enjoyment in and to the common elements (including the right of access, ingress and egress to and from his Unit over those portions of the Property designated for such purpose), and such easement shall be appurtenant to and shall pass with the title to every Condominium Unit, subject to the following provisions and limitations: the right, of the Association to control the use and enjoyment thereof as provided by the terms of this Declaration, which shall include but not be limited to the right of the Association to limit the use and enjoyment thereof to the Unit Owners and their respective families, tenants and guests, as well as to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by a Unit Owner, his family, tenants and guests; the right of the Association to limit the number of guests of Unit Owners; the right of Unit Owners, their families, tenants and guests to the exclusive use of the limited common elements appurtenant to their respective Units; the right of the Association to suspend the voting rights of a Unit Owner for any period of time during which an assessment against his Condominium Unit remains unpaid, or for a reasonable time for infraction of any provision of this Declaration, the By-Laws or its published rules and regulations.

3.02 Structural Support. Every portion of a Unit or the

common elements which contributes to the structural support of another Unit or the common elements shall be burdened with an easement of structural support. No Unit Owner shall be permitted to demolish his Unit except to the extent that such demolition may be required to repair or rebuild the Unit when the same has been partially or totally destroyed.

3.03 Encroachments. If any portion of the common elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the common elements, as a result of the construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement of any portion of the Condominium, a valid easement for the encroachment and for the maintenance, repair and replacement thereof shall exist so long as the encroachment exists. In the event that any building, any Unit, and adjoining Unit, or any adjoining portion of the common elements shall be partially or totally damaged or destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then repaired or reconstructed, encroachments of portions of the common elements upon any Unit, or of any Unit upon any other Unit or upon any portion of the common elements, due to such repair or reconstruction, shall be permitted, and valid easements for such encroachments and the maintenance, repair and replacement thereof shall exist.

3.04 Utilities. To the extent that any utility line, pipe, wire or conduit serving any Unit, Units or the common elements shall lie wholly or partially within the boundaries of another Unit or the common elements, such other Unit, Units or the common elements shall be burdened with an easement for the use, maintenance, repair and replacement of such utility line, pipe, wire or conduit, such easement to be in favor of the Unit, Units or common elements served by the same.

3.05 Rights of Association. There shall be a general easement in favor of the Association, its directors, officers, agents and employees (including, but not limited to any manager employed by the Association) and Declarant to enter upon the Property or any portion thereof and to take access through the Units for the installation maintenance, repair and replacement thereof and for the purpose of performing their respective duties. Each Unit Owner shall afford to other Unit Owners and to the Association, their respective agents, representatives and employees, such access through such Owner's Unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. In addition, the Association its directors, officers, agents and employees (including, but not limited to any manager employed by the Association) shall have a reasonable right of entry upon and through any Unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Condominium. The Association shall have the power to dedicate and convey utility lines and facilities, together with easements relating thereto, to the appropriate governments over

and through other property benefitting the Property, and the power to grant permits, licenses and easements over the common elements for the installation, maintenance, repair and replacement of utilities, for roads, and for other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium or the intended use of the common elements.

3.06 **Rights of Declarant.** Declarant and its duly authorized agents, representatives and employees shall have an easement for the maintenance of signs, a sales office, a business office, and model Units on the Property, together with such other facilities as in the opinion of Declarant may be reasonably required convenient or incidental to the completion, renovation, improvement, development or sale of the Condominium Units so long as Declarant owns any Condominium Unit primarily for the purpose of sale or has the unexpired option to add the Additional Property to the Condominium. During the period that Declarant owns any Condominium Unit, or has the unexpired option to add the Additional Property to the Condominium, Declarant, its duly authorized representatives, agents and employees, shall have the right to extend the existing drives and utility lines and pipes located on the Property to connect with the drives and utility lines and pipes to be located on the Additional Property and shall have a transferable easement on, over, through, under and across the common elements for the purpose of making and completing improvements on the Property or the Additional Property, for the purpose of installing, replacing, repairing and maintaining all utilities serving the Property or the Additional Property and for the purpose of doing all things reasonably necessary and proper in connection therewith. There are also reserved in Declarant, and its successors in title, perpetual easements for the benefit of the real property, comprising Additional Property, of ingress and egress over and across the roads and drives located on the Property, to be exercised in common with the Unit Owners, their guests, tenants, invitees and licensees, and for the purpose of connecting to, using, maintaining and repairing any utility line, pipe or facility or any drainage pipe or facility located on the Property. Such easements shall terminate as to any portion of the Additional Property which is added to the Condominium.

3.07 **Other Easements.** Marietta Cable TV, a Georgia corporation, its successors, transfers and assigns, has been granted an easement and right to provide closed circuit television service to the Property, together with easements of access, ingress and egress to and from the Property. A base fee for such television service will be paid by the Association, and additional service may be arranged between Marietta Cable TV and individual Unit Owners. The Cable Television Service Agreement is by this reference incorporated herein and made a part hereof.



ARTICLE IV

MAINTENANCE AND REPAIR

4.01 Association. Except as may be herein otherwise specifically provided, the responsibility of the Association with respect to maintenance, repair and replacement shall be to maintain, repair and replace all portions of the common elements, including without limitation all drives, street improvements, walkways, utility lines, pipes and systems located outside the Units, parking areas, swimming pool, tennis courts and all drainage pipes and facilities. Such responsibility for the common elements shall include all limited common elements appurtenant to Units including the repair or replacement of any portion of a deck which is a limited common element and the veneer or siding of exterior walls, except that the Association shall not be responsible for the cleaning of any decks. Notwithstanding the foregoing, the Association shall not be responsible for the maintenance, repair or replacement of any equipment or terminals for transmission of cable television service located in individual units. In addition to the maintenance of the common elements, the Association shall, as a common expense, maintain, repair and replace the following portions of the Units: foundations, fire walls, roof shingles and decking, gutters, downspouts, and the veneer or siding of exterior unit walls. Such maintenance, repair and replacement of portions of the Units by the Association shall not, however, include glass surfaces, screens, windows, lighting fixtures, mailboxes or other hardware or fixtures attached to the exterior surfaces of a Unit (other than gutters and downspouts), or the cleaning of decks, all of which shall be the responsibility and expense of individual Unit Owners. Except as may be otherwise provided by the Act, the Association shall not be liable for injury or damage to a person or property caused by the elements or by any Unit Owner, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the common elements or from any pipe, drain, conduit, appliance or equipment the responsibility for the maintenance of which is that of the Association, nor shall the Association be liable to any Unit Owner for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the common elements. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

4.02 Unit Owner. The responsibility of the Unit Owner with respect to maintenance and repair shall be to maintain, repair and replace all portions of his Unit, except those portions which are to be maintained, repaired or replaced by the Association.

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The responsibility of the Unit Owner shall include the maintenance, repair and replacement of the windows, screens and doors (including sliding glass doors) which are part of the Unit, the heating and air-conditioning system, including the compressor, serving his Unit and all chutes, flues, ducts, conduits, wires, pipes or other apparatus located within the boundaries of such Owner's Unit or deemed to be a part thereof. Each Unit Owner shall be responsible for maintaining, repairing and replacing any equipment or terminals for transmission of cable television service located in such Owner's Unit (except to the extent that the same is the responsibility of the company or other person providing such service), and all portions of any deck adjoining his Unit, other than such portions of such deck as are to be maintained by the Association. Each Unit Owner shall be responsible for performing his responsibilities in such manner so as not unreasonably to disturb other persons in other Units and shall promptly report to the Association or its agent any defect or need for repairs, the responsibility for the remedying of which is that of the Association. The Association shall have the right but not the obligation to make any repair or replacement or to do any cleaning or maintenance, which is the responsibility of the Unit Owner, but which responsibility the Unit Owner fails or refuses to discharge, and in such event such Unit Owner shall be obligated to pay for the cost incurred by the Association for such work. Each Unit Owner shall also be obligated to pay for the cost of repairing, replacing, or cleaning any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of such Unit Owner, his family, tenants or guests, and such cost shall be added to and become part of the assessment or portion thereof next coming due to which the Unit Owner is subject.

#### ARTICLE V

#### ASSESSMENTS

5.01 Creation of Lien and Personal Obligation. Each Owner of any Condominium Unit, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association annual and special assessments or charges provided by this Declaration, together with interest thereon, which shall be fixed, established and collected from time to time as hereinafter provided. The liability of each Owner for all annual and special assessments described in this Article V shall be weighted as set forth on Exhibit "C" hereto, except as may be provided by Section 5.02(b). All annual and special assessments and other charges provided by this Declaration, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge against and continuing lien upon the Condominium Unit against which each such assessment or charge is made. Each Unit Owner shall be liable for his portion of each assessment coming due while he is the Owner of a Condominium Unit, and his grantee shall be jointly and severally liable for

agreement to  
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such portion thereof as may be due and payable at the time of conveyance, but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor; provided, however, that if such grantor or grantee shall request a statement from the Association as provided in Section 5.04 of this Article V, such grantee, his successors, successors-in-title and assigns, shall not be liable for, nor shall the Condominium Unit conveyed be subject to a lien for, any unpaid assessments against such grantor in excess of the amount set forth in such statement, if any. In the event that the holder of a first priority, or secondary purchase money, mortgage of record or other person acquires title to any Condominium Unit as a result of foreclosure of a first priority, or secondary purchase money mortgage, such holder or other person, his or its successors, successors-in-title and assigns, shall not be liable for, nor shall such Condominium Unit be subject to a lien for, any assessment hereunder or under any condominium instrument chargeable to such Condominium Unit on account of any period prior to such acquisition of title; provided, however, that such unpaid share of any assessment or assessments shall be deemed to be common expenses collectible from all of the Unit Owners, including such holder or other person, his or its successors, successors-in-title, and assigns. For purposes of the foregoing sentence, the term "foreclosure" shall also be deemed to include any Condominium Unit acquired by any such mortgage holder pursuant to a deed or assignment in lieu of foreclosure.

#### 5.02 Allocation of Liabilities for Common Expenses:

(a) General Assessments. The amount of all common expenses not specifically assessed pursuant to the provisions of this Declaration, less the amount of all undistributed and unreserved common profits, shall be assessed against the Condominium Units in accordance with the respective liabilities for assessments of the Condominium Units. The Board of Directors of the Association shall have the authority and duty to levy and enforce the collection of all annual and special assessments for common expenses as herein provided; the annual assessment payable by the Unit Owners shall be levied by the Board of Directors after the same is determined in the manner set forth in this Section 5.02. During that portion of the calendar year from the effective date of this Declaration to the end of the year, the annual assessment applicable to each Condominium Unit shall be as set forth in the budget for the condominium delivered to each purchaser of a Condominium Unit. Not later than November 1st of each calendar year, the Board of Directors of the Association shall prepare and submit in writing to the Unit Owners an estimated budget of the common expenses for each ensuing calendar year to be paid by assessments collected from the Unit Owners, together with notice of the amount of the annual assessment payable by each Unit Owner during such calendar year. Such budget and the annual assessment for the ensuing calendar year shall be effective as of January 1 of such year unless prior to such date such budget and annual assessment shall have been disapproved by two-thirds (2/3) of the votes in the Association

held by all Unit Owners voting in person or by proxy at the annual meeting of the Association or at a meeting duly called and held for such purpose. In the event of such annual meeting disapproval, the Board of Directors shall prepare and submit to the Unit Owners in the same manner within thirty (30) days of submission. If said estimated budget proves inadequate for the payment of current operating expenses, then the Board of Directors of the Association may levy at any time a further assessment against the Unit Owners or increase the current annual assessment to cover such deficiency and notify the Unit Owners accordingly. If for any reason an annual budget is not made as required hereby, a payment in the amount required by the last prior assessment shall be due upon each assessment date until changed by a new assessment. Common expenses of the Association to be paid through annual assessments shall include, but shall not necessarily be limited to, the following:

(i) any management fees and expenses of administration, including legal and accounting fees;

(ii) utility charges for utilities serving the common elements and charges for other common services;

(iii) the cost of any master or blanket policies of insurance purchased for the benefit of all Unit Owners and the Association as required by this Declaration, including fire and other hazard coverage, public liability coverage, and such other insurance coverage as the Board of Directors determine to be in the interests of the Association and the Unit Owners;

(iv) the expense of maintenance, repair, replacement and operation of the common elements as well as any maintenance upon the Units which is the responsibility of the Association;

(v) charges for utilities, including water and cable television, provided to the Units and not separately metered;

(vi) such other charges as may be determined from time to time by the Board of Directors of the Association to be common expenses, including, without limitation, taxes and governmental charges not separately assessed against each Condominium Unit, other than ad valorem real property taxes; and

(vii) the establishment and maintenance of a reasonable reserve fund or funds for maintenance, repair and replacement of those common elements that must be replaced on a periodic basis and of a reserve to cover operating contingencies or deficiencies arising from unpaid assessments or liens, emergency expenditures and other matters, as may be authorized from time to time by the Board of Directors.

The annual assessment for the common expenses described above shall be paid by and collected from the Unit Owners in accordance with their respective liabilities for assessments set forth in Section 5.01. Each Unit Owner shall be obligated to pay such assessments to the Association in equal monthly installments on or before the first day of each month during the calendar year. In any year in which there is an excess of assessments and other income over expenditures, such excess shall appertain to the Condominium Units in proportion to their respective liabilities for assessments under Section 5.01, and the Board of Directors, by resolution and without the necessity of a vote of the Unit Owners, shall determine either to apply such excess or any portion thereof against and reduce the subsequent year's assessments or to allocate the same to one or more reserve accounts of the Association described above. Any of the foregoing provisions of this paragraph 5.02(a) which may be construed to the contrary notwithstanding, no assessment shall be payable under this paragraph 5.02(a) by any Unit Owner until this Declaration is filed for record in the Office of the Clerk of the Superior Court of the County in which the Condominium is located. Therefore, the first annual assessment payable under this paragraph 5.02(a) shall be prorated according to the number of days remaining in the calendar year after the date upon which this Declaration is so filed and recorded. In the event that the Association acquires title to a Condominium Unit, the Association shall be exempt from all assessments during the period of its ownership thereof.

(b) Special Assessments. The special assessments provided for in this Section 5.02(b), other than the special assessments for the working capital fund described herein, shall be levied and collected by the Board of Directors of the Association and the amount and due dates of special assessments so levied shall be as specified by the Board of Directors; provided, however, that the Board of Directors shall endeavor to anticipate and budget for special assessments so as to collect the same in monthly installments. Any common expenses occasioned by the conduct of less than all those entitled to occupy all of the Condominium Units or by the licensees, invitees or occupants of any such Condominium Unit or Units shall be specially assessed against the Condominium Unit or Units, the conduct of any occupant, licensee or invitee of which occasioned any such common expenses, and any common expenses benefitting less than all of the Condominium Units, including, without limitation, cable television service and sanitation fees, shall be specially assessed equitably among all of the Condominium Units so benefitted. Except as provided in Section 4.02, however, there shall be no special assessments against any particular Condominium Unit for any common expenses associated with the maintenance, repair, restoration, renovation or replacement of any limited common elements; rather, such expenses shall be common expenses. Further, notwithstanding anything to the contrary set forth herein, special assessments for the repair or reconstruction of any casualty damage shall be assessed against

all of the Condominium Units in accordance with their respective liabilities for assessments. A working capital fund shall be established for the initial months of the operation of the Condominium equal to at least two months of the annual assessment applicable to each Condominium Unit. Such fund shall be collected with respect to each Condominium Unit and transferred to the Association at the time of the closing of the sale of such Condominium Unit by Declarant to a purchaser, other than a person or persons constituting Declarant, and shall be maintained in a segregated account for the use and benefit of the Association. The purpose of such working capital fund is to insure that the Board of Directors will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable by the Board of Directors, and amounts paid into such working capital fund shall not be considered as an advance payment of regular annual assessments.

5.03 **Special Assessments for Capital Improvements.** In addition to the special and general assessments authorized above, and in addition to the special assessments for reconstruction or repair of casualty damage, the Board of Directors of the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any capital addition or capital improvement of the common elements (including the necessary fixtures and personal property relating thereto), or for the cost of repair or replacement of a portion of the common elements (including the necessary fixtures and personal property relating thereto), which is for the benefit of all Unit Owners in the Condominium as a whole; provided, however, the total amount of the special assessment levied by the Board of Directors under and pursuant to the provisions of this Section 5.03 shall not exceed the sum of \$100.00 per Condominium Unit in any one calendar year unless approved by a majority of the votes of the Unit Owners, voting in person or by proxy at a meeting duly called and held for such purpose. Unit Owners shall be assessed for such special assessments in accordance with the liability for assessments of their respective Condominium Units, and the due date(s) of any such special assessments shall be specified by the Board of Directors of the Association. Notwithstanding the foregoing, so long as Declarant shall own one or more Condominium Units no special assessment shall be levied pursuant to the provisions of this Section 5.03 unless such special assessment shall also be approved by Declarant.

5.04 **Evidence of Payment.** Any Unit Owner, mortgagee of a Condominium Unit, person having executed a contract for the purchase of a Unit, or lender considering the loan of funds to be secured by a Condominium Unit, shall be entitled upon request to a statement from the Association or its management agent setting forth the amount of assessments past due and unpaid (with late charges and interest applicable thereto) against that Condominium Unit. Such request shall be in writing, delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. Failure on the part of the Association to mail to such address as may be specified in

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the written request therefor, or otherwise furnish, such a statement within five (5) business days from the receipt of such request shall cause the lien for assessments created by this Article, as to amounts due and payable at the expiration of such five day period, with respect to the Condominium Unit involved, to be extinguished and of no further force or effect as to the title or interest acquired by the purchaser or lender, if any, as the case may be, and their respective successors and assigns, in the transaction contemplated in connection with such request. The information specified in such statement shall be binding upon the Association and every Unit Owner. Payment of a fee of Ten Dollars (\$10.00), which shall accompany such request, shall be required as a prerequisite to the issuance of such a statement.

5.05 Non-Payment of Assessments: Remedies. Any assessment, or portion thereof, not paid when due shall be delinquent. If the same is not paid within five (5) days after the due date, then the Board of Directors may assess a late charge, not in excess of the greater of Ten Dollars (\$10.00) or ten percent (10%) of the amount of each assessment or installment thereof not paid when due, which shall also be due and payable to the Association. If any assessment or portion thereof is delinquent for a period of more than five (5) days, then if not paid within ten (10) days after written notice is given to the Unit Owner to make such payment, the entire unpaid balance of the assessment may be accelerated at the option of the Board of Directors and be declared due and payable in full, and foreclosure proceedings may be instituted to enforce such lien. Such notice shall be sent by certified mail, return receipt requested, to the Unit Owner both at the address of the Condominium Unit and at any other address or addresses the Unit Owner may have designated to the Association in writing, specifying the amount of the assessments then due and payable, together with charges of interest accrued thereon. Any assessment or portion thereof, together with authorized late charges, not paid when due shall, at the option of the Board of Directors, bear interest from the date of delinquency until paid at a rate not to exceed eight percent (8%) per annum or such rate as may be otherwise permitted by the Act. The Board of Directors of the Association may suspend the voting rights of the Unit Owner during the period in which any assessment or portion thereof remains unpaid and after at least ten (10) days written notice is given to the Unit Owner as aforesaid, and the Association may bring an action at law against the Unit Owner personally obligated to pay the same or foreclose its lien against such Owner's Condominium Unit, in which event late charges, interest and costs of collection shall be included in such lien, with such costs of collection to include court costs, the expenses of sale, any expenses required for the protection and preservation of the Condominium Unit and reasonable attorney's fees actually incurred. All payments on account shall be applied first to the aforesaid costs of collection, then to late charges, then to interest, and then to the assessment lien first due. All late charges and interest collected shall be credited to the common expense fund. Each Unit Owner vests in

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the Board of Directors of the Association the right and power to bring all actions against him personally for the collection of such assessments as a debt and to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article V shall be in favor of the Association and shall be for the benefit of all Unit Owners. The Board of Directors, acting on behalf of the Association, shall have the power to bid in the Condominium Unit at any foreclosure sale and to acquire, hold, lease, encumber and convey the same. No Unit Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common elements or abandonment of his Condominium Unit. The lien for assessments shall lapse and be of no further effect as to assessments or installments thereof, together with late charges and interest applicable thereto, first becoming due and payable more than three (3) years prior to the institution of suit therefor if suit is not instituted within ninety (90) days after the giving of such notice.

5.06 Priority of Lien. All sums lawfully assessed against any Unit Owner or Condominium Unit, whether for the share of the common expenses lawfully appertaining to that Condominium Unit or otherwise, shall from the time the same become due and payable constitute a lien, in favor of the Association, on such Condominium Unit, prior and superior to all other liens except only (a) the lien for ad valorem taxes applicable to such Condominium Unit, (b) the lien of a first priority mortgage, if any, or secondary purchase money mortgage, if any, to which the Condominium Unit is subject, and (c) the lien of any mortgage recorded prior to the recording of this Declaration. The sale or transfer of any Condominium Unit shall not affect the assessment lien; provided, however, that the sale or transfer of any Condominium Unit which is subject to any such mortgage by virtue of the foreclosure of such mortgage or by virtue of any deed or assignment in lieu of foreclosure shall extinguish the lien of such assessments as to payments thereof which became due prior to such sale or transfer. Any such delinquent assessments so extinguished shall be reallocated and collected as common expenses from all of the Owners as provided in Section 5.01, and no such sale or transfer pursuant to foreclosure or a deed or assignment in lieu thereof shall relieve the Unit Owner from liability for any assessment thereafter becoming due or the Condominium Unit from the lien of any assessment made thereafter.

Payment of  
Foreclosure

#### ARTICLE VI

#### ADMINISTRATION

6.01 Administration of the Condominium. The administration of the Condominium, including without limitation the maintenance, repair, renovation, replacement and operation of the common elements and those acts required of the Association by the Act, the Georgia Nonprofit Corporation Code, this Declaration, the By-Laws and the Articles of Incorporation, shall be the responsibility of the Association, and the exercise of the powers



and duties of the Association shall be in accordance with the Act, the Georgia Nonprofit Corporation Code, this Declaration, the Articles of Incorporation and the By-Laws. Subject to any limitation contained in the Act, Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events to occur: (i) the expiration of three (3) years after the date of the recording of this Declaration, (ii) the date as of which Units to which four-fifths (4/5) of the undivided interests in the common elements appertain shall have been conveyed by Declarant to Unit Owners other than a person or persons constituting Declarant, (iii) four months after 75% of the Condominium Units have been conveyed to Unit purchasers, and (iv) the surrender by Declarant of the authority to appoint and remove members of the Board of Directors and officers of the Association by an express amendment to this Declaration executed and recorded by Declarant. Upon the expiration of the period of Declarant's right to appoint and remove members of the Board of Directors and officers of the Association, such right shall automatically pass to the Unit Owners, including Declarant if Declarant then owns one or more Condominium Units, and a special meeting of the Association shall be called. At such special meeting the Unit Owners shall elect a Board of Directors and shall undertake the responsibilities of the Association. Every grantee of any interest in the Property, by acceptance of a deed to or other conveyance of such interest, agrees that Declarant shall have such authority to appoint and remove members of the Board of Directors and officers of the Association and vests in Declarant such authority.

**6.02 Duties and Powers.** The duties and powers of the Association shall be those set forth in the Act, the Georgia Nonprofit Corporation Code, this Declaration, the By-Laws and the Articles of Incorporation of the Association, together with those reasonably implied to effect the purposes of the Association. Except to the extent otherwise required by the Act, the Georgia Nonprofit Corporation Code, this Declaration, or the By-Laws or Articles of Incorporation of the Association, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors, acting through its officers, without any further consent or action on the part of the Unit Owners. The Board of Directors may employ a professional management firm to manage the operation and affairs of the Condominium and the Association. Any such management agreement or any management agreement or other contract providing for the services of Declarant or any person affiliated with Declarant shall not exceed three (3) years, and any such agreement shall be terminable by either party thereto without cause and without payment of a termination fee upon no more than ninety (90) days written notice. In the event that the Board of Directors shall fail to perform any duty or duties which, under the terms of this Declaration, the other Condominium instruments, the Articles of Incorporation, the By-Laws or the Act, are to be performed by it, the Owner or first mortgagee who is aggrieved by such failure shall have the right to proceed in equity to compel the Board of

Directors to perform such duty or duties. In no event, however, shall any member or members of the Board of Directors have any liability to any Owner or first mortgagee for any failure by the Board of Directors to perform any such duty or duties, except to the extent specifically provided in the Act. Subject to and in accordance with the provisions or limitations set forth in the By-Laws of the Association, each director and each officer of the Association shall be entitled to be indemnified by the Association in connection with any threatened, pending or completed action, suit or proceeding with respect to which such person was or is a party by reason of the fact that such person is or was a Director or officer of the Association.

6.03 Property. All funds received and title of all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring the same, shall be held for the benefit of the Unit Owners as herein provided and for the purposes herein stated. The shares of the Unit Owners in the funds and assets of the Association cannot be individually assigned, hypothecated or transferred in any manner except as an appurtenance to a Condominium Unit.

6.04 Rules and Regulations. Reasonable regulations, rules and requirements concerning the use of the Units, appurtenances thereto, limited common elements and common elements may be adopted, promulgated, revoked, made and amended from time to time by the Board of Directors, provided that copies of such regulations, rules and requirements and amendments thereto shall be furnished by the Board of Directors to all Unit Owners. Such regulations, rules and requirements shall be binding upon the Unit Owners, their families, tenants, guests, invitees and agents, until and unless any such regulation, rule or requirement is specifically overruled and cancelled in a regular or special meeting by the vote of Unit Owners holding a majority of the total votes in the Association. Failure to abide by any such regulation, rule or requirement shall be grounds for an action by the Association and any aggrieved Unit Owners to recover damages or obtain injunctive or equitable relief or both and shall entitle the Association to any other remedies provided by the Act or this Declaration.

## ARTICLE VII

### INSURANCE

7.01 Requirements. The Association shall maintain the insurance required by Section 39 of the Act and such other insurance as the Board of Directors may deem appropriate. Except as herein may be otherwise provided, insurance policies upon the Property shall be master or blanket policies purchased by the Association for the benefit of the Unit Owners and their respective mortgagees, as their interest may appear. Such policies shall provide for the issuance of certificates to the Unit Owners and for mortgagee endorsements to the mortgagees of

the Condominium Units or any of them.

**7.02 Coverage.**

(a) All Units and all other insurable improvements (exclusive of improvements and betterments made by a Unit Owner which shall be his responsibility) upon the Property, including those improvements comprising the common elements, and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof, exclusive of excavation and foundations, as determined annually by the Board of Directors of the Association. Such coverage shall afford protection against (i) loss or damage by fire and other hazards covered by the standard extended coverage endorsement and (ii) such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the Units, including, but not limited to vandalism and malicious mischief.

(b) Public liability and property damage insurance in such amounts and in such forms as shall be required by the Board of Directors of the Association, but not less than required by Section 39 of the Act.

(c) Fidelity coverage against dishonest acts on the part of Association directors, officers, employees, agents and volunteers responsible for handling funds belonging to or administered by the Association. Such coverage shall be in an amount not less than the maximum amount normally within the custody of such persons.

(d) Such other types of insurance required by law or authorized by the Board of Directors from time to time. In addition to and not in limitation of the foregoing and any requirements relating to insurance set forth in the By-Laws, all casualty liability and other insurance and fidelity bond coverage shall be maintained by the Association in accordance with and satisfy all requirements specified by the applicable provisions of the Federal National Mortgage Association Conventional Home Mortgage Selling Contract Supplement.

**7.03 Insurance Trustee.** All casualty insurance policies purchased by the Association for the benefit of the Unit Owners and their mortgagees shall provide that (i) proceeds covering property losses of Declarant shall be paid directly to Declarant, or in the event a mortgagee endorsement has been issued with respect to Declarant's interest in the Property, then jointly to the mortgagee and Declarant, and (ii) proceeds covering property losses of Unit Owners other than Declarant shall be paid to the Association. The Board of Directors shall serve as the Insurance Trustee over said proceeds and all references in this Declaration to an Insurance Trustee shall be deemed to refer to the Board of Directors acting as such Trustee; provided, however, that in the event an insurance loss exceeds \$50,000 the Board of Directors shall be required to employ an insurance trustee which shall be a

Marietta, Georgia, banking institution having trust powers with offices in Marietta, Georgia, as may from time to time be approved and appointed by the Board of Directors of the Association. The duty of the Insurance Trustee shall be to receive such proceeds as are paid to it and hold the same for the purposes elsewhere stated herein and for the benefit of such Unit Owners and their mortgagees in the following shares, which shares need not be set forth on the records of the Insurance Trustee:

(a) Common Elements. Proceeds on account of damage to common elements not involving a Unit, an undivided share for each Unit Owner, such share being the same as the undivided interest in the common elements appurtenant to his Condominium Unit.

(b) Units. Proceeds on account of damage to Units, or on account of damage to common elements involving a Unit, shall be held for the Owners of the damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Board of Directors of the Association. (For the purpose of the provisions of this Declaration, the phrases "common elements involving a Unit" or "common elements involving such Unit" shall be deemed to refer to and include those portions of the building in which a Unit is located which are part of the common elements of the Condominium.)

(c) Mortgagees. In the event a mortgagee endorsement has been issued as to any Condominium Unit, the share of a Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear. In the event of substantial damage to or destruction of any Unit or any part of the common element, the holder of any first mortgage on a Condominium Unit shall be entitled to timely written notice of any such damage or destruction, and no provision of this Declaration or of any other document establishing the Condominium shall entitle the Owner of a Condominium Unit or other party to priority over such holder with respect to the distribution of any insurance proceeds with respect to such Condominium Unit.

7.04 Other Insurance. Each Unit Owner may obtain insurance at his own expense, affording coverage upon his personal property, as well as upon any improvements and betterments he may make to his Unit, or as may be required by law. In the event a Unit Owner may carry insurance individually upon his interest in the Condominium, which in case of loss results in proration of insurance proceeds between the master policy carried by the Association and such policy carried by the Unit Owner, the proceeds available under the Unit Owner's policy shall be payable to the Insurance Trustee, who is irrevocably designated as trustee of each insuring Unit Owner, other than Declarant, for the purposes of reconstruction. Any surplus remaining upon completion of reconstruction directly affecting any such Unit Owner shall thereupon be paid by the Insurance Trustee to the Unit Owner. Each Unit Owner acquiring additional separate insurance coverage shall furnish the Association with a copy of

each such policy within ten (10) days following acquisition. Insofar as may be permitted by law, each such policy acquired by a Unit Owner shall contain a waiver of subrogation as to any claims against the Association and of any defense based on co-insurance. The Board of Directors may, to the extent permitted by applicable law, require all Unit Owners to carry public liability and personal property damage insurance with respect to their occupancy of their respective Units and to furnish copies or certificates thereof to the Association. No Unit Owner shall be entitled to exercise his right to maintain insurance coverage in such a manner as to diminish or affect any recovery or payment which may be realized under any insurance policy carried by the Association.

#### ARTICLE VIII

##### RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE

The provisions of this Article VIII shall govern the repair and reconstruction of the Property in the event of damage by fire or other casualty to any part thereof. The terms "repair" or "reconstruction" as used in this Section shall mean repairing or restoring the Property to substantially the same condition in which it existed prior to the fire or other casualty with each Unit and the common elements having the same boundaries as before. For the purpose of this Section, the term "substantial loss" shall mean a loss involving damage or destruction having a cost of restoration or repair of more than fifty (50%) percent of the replacement cost of the improvements which are damaged or destroyed by casualty.

##### 8.01 Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Property covered by insurance purchased by the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance with respect to property losses of Unit Owners and obtain reliable and detailed estimates of the cost of repair or reconstruction of such damage or destroyed property. The Board of Directors or its authorized agent shall also take such steps as may be reasonably necessary to make the Units and all parts of the common elements safe and secure and to prevent the same from creating a dangerous or hazardous situation.

(b) Each Unit Owner and each mortgagee of a Condominium Unit, by acceptance of a deed or other conveyance therefor, hereby agree that in the case of damage or destruction to common elements not involving a Unit, such damage or destruction shall be repaired or reconstructed unless there is a substantial loss of the common elements resulting from such damage or destruction and unless, within forty-five (45) days of the date of such casualty Owners of Condominium Units comprising at least seventy-five (75%) percent of the total vote of the

Association and the first mortgagees holding interests in such Condominium Units agree in writing not to repair or reconstruct.

(c) Each Unit Owner and each mortgagee of a Condominium Unit, by acceptance of a deed or other conveyance therefor, hereby agree that in the case of a casualty causing damage or destruction to the Units, such damage or destruction (including any damage or destruction to any common elements involving such Unit) shall be repaired or reconstructed unless:

(i) there is a substantial loss of the Units so damaged or destroyed, and

(ii) seventy-five (75%) percent or more of the Units in any one (1) building in the Condominium are damaged or destroyed by such casualty, and

(iii) within forty-five (45) days of such casualty, Owners of Condominium Units comprising at least seventy-five (75%) percent of the total vote of the Association and the first mortgagees holding interest in such Condominium Units, including the Owners of the damaged or destroyed Units and their first mortgagees, agree in writing not to repair or reconstruct.

Should the Unit Owners and their first mortgagees so decide not to repair or reconstruct damaged or destroyed Units, then such damaged or destroyed Units shall not be repaired or reconstructed, and the entire undivided interest in the common elements appertaining to such Condominium Units shall thenceforth appertain to the remaining Condominium Units, being allocated in proportion to their undivided interests in the common elements immediately prior to such allocation, and any remaining portion of such damaged or destroyed Units shall thenceforth be a part of the common elements. Votes in the Association and liability for assessments shall thereupon appertain to the remaining Condominium Units, being allocated to them in proportion to their relative voting strength in the Association and liability for assessments immediately prior to such allocation.

(d) If for any reason the amount of insurance proceeds to be paid as a result of a casualty, or reliable and detailed estimates of the cost of repair or reconstruction of such casualty, are not made available within forty-five (45) days after such casualty, then the forty-five (45) day period specified in subparagraph (b) or subparagraph (c) above, as the case may be, shall be extended until such information is made available; provided, however, that such period of time shall in no event exceed sixty (60) days after such casualty.

(e) So long as Declarant retains the right to appoint and remove members of the Board of Directors and officers of the Association, as provided in Section 6.01 of Article VI, the Insurance Trustee may rely upon a certificate signed by Declarant to determine whether or not damage or destruction is to be repaired or reconstructed. Thereafter, the Insurance Trustee may

rely upon a certificate signed by the President and Secretary of the Association to determine whether or not damage or destruction is to be repaired or reconstructed.

(f) If it is determined in accordance with the foregoing provisions hereof that any damaged common elements shall not be repaired or restored, then the insurance proceeds appertaining thereto shall be divided among the Unit Owners in accordance with the provisions of Section 7.03 of Article VII after payment of or making provisions for any expenses of the Insurance Trustee. If it is determined in accordance with the foregoing provisions hereof that any damaged Unit shall not be repaired or restored, then, after deducting therefrom a reasonable amount to be paid to the Association to cover the expense of removal of debris from the landscaping of the area where the damaged Unit was located and after payment of or making provision for the expenses of the Insurance Trustee, the insurance proceeds appertaining thereto shall be paid to the Owner of such damaged Unit in proportion to the total damage for which proceeds are received, and thereupon such Owner shall have no further right, title or interest in the Condominium; provided, however, in all cases where there is a mortgagee endorsement with respect to any such damaged Unit, any insurance proceeds shall be disbursed to the Unit Owner and such mortgagee jointly, who shall use such proceeds as they alone may determine. This is a covenant for the benefit of any such mortgagee and may be enforced by any such mortgagee.

#### **8.02 Repair and Reconstruction.**

(a) If the damage or destruction for which the insurance proceeds are paid to the Insurance Trustee is to be repaired or reconstructed, then, after paying or making provision for the expenses of the Insurance Trustee, the remaining proceeds shall be disbursed to defray the cost of such repairs or reconstruction as herein provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners thereof, as determined in accordance with the provisions of Section 7.03 of Article VII hereof, remittances to Unit Owners and their mortgagees having mortgagee endorsements being payable jointly to them, who shall use such proceeds as they alone may determine. This is a covenant for the benefit of such mortgagees and may be enforced by any such mortgagee.

(b) If the damage or destruction for which the insurance proceeds are paid to the Insurance Trustee is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall levy a special assessment or assessments to provide funds to pay such excess cost of repair or reconstruction, in the following manner:

(i) Any such assessment on account of damage or destruction to any Unit shall be assessed against the Owner of the damaged Unit.

(ii) Any such assessment on account of damage or destruction to any common elements serving less than all Unit Owners shall be assessed equitably against all Unit Owners served thereby.

(iii) Any such assessment on account of damage or destruction to any common elements serving all Unit Owners shall be assessed against all Unit Owners in the Condominium in proportion to their respective undivided ownership interest in the common elements.

(c) If the damage or destruction is to be repaired or reconstructed, the funds for the payment of costs for repair or reconstruction, the Construction Fund shall be held and disbursed in payment of such costs in the following manner:

(i) **Unit Owners.** The portion of insurance proceeds representing damage to a Unit for which the responsibility of reconstruction and repair lies with a Unit Owner shall be paid by the Insurance Trustee to the Unit Owner, or if there is a mortgagee endorsement as to such Unit, then to the Unit Owner and the mortgagee jointly, who shall use such proceeds to repair or reconstruct the damage or destruction which is the responsibility of the Unit Owner. Each Unit Owner shall be responsible for the repair and replacement of all portions of his Unit, including all fixtures, equipment and appliances installed in or located within the boundaries of his Unit, and for the repair and replacement of the hot water heater serving his Unit if not located within such boundaries. All other repairs or reconstruction shall be the responsibility of the Association. Subject to the approval of the Board of Directors of the Association, the Association may, but shall not be required to, undertake the repair or replacement of some or all of the damage or destruction which is the responsibility of the Unit Owner; provided, however, under no circumstances shall other Unit Owners in the Condominium be required to bear any portion of the cost for any repairs or replacements which are the responsibility of a particular Unit Owner, the liability therefor in all cases being that of the Unit Owner who is responsible for such repairs or replacements under the provisions of this Declaration.

(ii) **Association - Minor Damage.** If the amount of the estimated cost of reconstruction and repair which is the responsibility of the Association is \$50,000.00 or less, then the Construction Fund shall be held by the Association rather than the Insurance Trustee and disbursed in payment of such costs upon the order of the Association.

(iii) **Association - Major Damage.** If the amount



of the estimated costs of reconstruction and repair which is the responsibility of the Association is more than \$10,000.00, then the Association shall supply to one or more independent contractors plans or specifications for such reconstruction and repair and prior to the commencement of any such reconstruction and repair, any such contractor who agrees to perform all or any part of such reconstruction and repair shall execute a contract wherein the work, labor and materials indicated by such plans and specifications will be furnished at an agreed price, and, if the Board of Directors shall determine that the same is in the best interest of the Association, a performance, completion and payment bond shall be a part thereof. To the extent that any major damage shall involve personal property, a bid need only be supplied from a supplier of the same with a firm price indicated thereon. Further, the Construction Fund shall be disbursed in payment of such costs upon approval of a registered architect or licensed professional engineer selected and employed by the Board of Directors of the Association to supervise or perform the work.

(iv) **Surplus.** It shall be presumed that the first moneys disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a Construction Fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund in the manner elsewhere stated herein; provided, however, that the part of a distribution to an Owner of a Unit which is less than the assessments paid by such Owner into the Construction Fund shall not be made payable to the mortgagee having an interest in such Unit unless such mortgagee, itself, shall have advanced any portion of any such assessments paid by the Owner, in which event the agreement between the Owner and such mortgagee shall prevail.

(v) **Certificate.** Notwithstanding the provisions herein, the Insurance Trustee shall not be required to determine whether or not sums paid by Unit Owners upon assessment shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the Construction Fund are to be upon the order of the Association or upon approval of an architect or otherwise, nor whether a disbursement is to be made from the Construction Fund, nor to determine whether surplus funds to be distributed are less than the assessments paid by Unit Owners, nor to determine any other fact or matter relating to its duties hereunder. Instead, the Insurance Trustee may rely upon a certificate of Declarant so long as Declarant shall have the right to appoint and remove members of

the Board of Directors and officers of the Association as provided by Section 6.01 of Article VI, and thereafter, upon the certificate of the Association made by its President and Secretary as to any or all such matters and, if applicable, as to the name of the payee and the amount to be paid; provided, however, that when a mortgagee has an endorsement to an insurance policy, the proceeds of which are included in the Construction Fund, and is herein required to be named as payee, the Insurance Trustee shall also name the mortgagee.

(vi) If the damage to be repaired or reconstructed is to the common elements, such repair or reconstruction shall be substantially in accordance with the plans and specifications for such damaged property prior to the occurrence of such damage, or in accordance with such different plans and specifications as may be approved for such purpose by the Board of Directors. Notwithstanding the foregoing, in the event that the Board of Directors shall approve plans and specifications for the repair or reconstruction of such damaged property which differ materially from those of the damaged property prior to the occurrence of such damage, and if the insurance proceeds available as a result of such damage or destruction is greater than ten (10%) percent of the total revenues anticipated to be received by the Association under the then current budget of the Association, the Board of Directors shall give prompt notice of the same to the Unit Owners, and such plans and specifications shall be submitted for the approval of the majority of the vote of the Association, if a request to such effect is submitted in writing signed by Owners together possessing at least fifteen (15%) percent of the total vote of the Association not later than fourteen (14) days after receipt of such notice from the Board of Directors regarding such differing plans and specifications.

(vii) If the damage to be repaired or reconstruction is to any Unit, such repair, reconstructions or rebuilding shall be substantially in accordance with the plans and specifications for such damaged Unit prior to the occurrence of such damage, or in accordance with such differing plans and specifications as are approved for such purpose by both the Owner of the Unit which is to be so repaired or reconstructed and by the Board of Directors.

8.03 Units Owned by Declarant. Any of the foregoing provisions of this Section to the contrary notwithstanding, with respect to any damaged Unit owned by Declarant, including any common elements involving any such Unit, it shall be the responsibility of Declarant to perform the functions which are herein specified to be performed by the Association. That is, in

the event of damage or destruction by fire or other casualty to any Unit owned by Declarant, including any common elements involving such Unit, it shall be the responsibility of Declarant to file and adjust all insurance claims affecting the same, and if a decision not to repair or reconstruct any such damaged Unit owned by Declarant is not made as provided in this Section, then it shall be the responsibility of Declarant to repair or reconstruct such damage.

#### ARTICLE IX

##### ARCHITECTURAL CONTROL, USE RESTRICTIONS AND SALE OR LEASING OF UNIT

To assure a community of congenial Owners and thus protect the value of the Condominium Units, the Property, including all improvements comprising a part thereof, shall be subject to the restrictions set forth in this Article IX and in all of the rules and regulations of the Association, which may now or hereafter be adopted.

9.01 Approval Required for Changes. To preserve the architectural appearance of the Condominium, no construction of any nature whatsoever shall be commenced or maintained by any Owner other than Declarant with respect to the exterior of any Unit or any other portion of the Condominium, including any limited common elements appurtenant thereto, nor shall any exterior addition to or change or alteration therein be made, unless and until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the Board of Directors, or by an architectural committee appointed by the Board of Directors, as to harmony of external design and location in relation to surrounding structures and topography. The foregoing restriction shall apply without limitation to a deck which is a part of a Unit. A Unit Owner may make improvements and alterations within his Unit; provided, however, that no Unit Owner shall make any improvements or alterations within his Unit or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety, soundness or structural integrity of any structure or otherwise materially lessen the support of any portion of the Condominium. Further, no Unit Owner shall impair any easement without first obtaining the written consent of the Association and of the Unit Owner or Owners and their mortgagees for whose benefit such easement exists.

9.02 Residential Purpose. All Condominium Units shall be, and the same hereby are, restricted exclusively to residential use, and the occupancy thereof shall be subject to such restrictions as the Board of Directors may establish pursuant to the rules and regulations of the Association.

9.03 Business Activities and Signs. No business activities shall be conducted on any portion of the Property. Except as may

be required by legal proceedings, no "For Sale" or "For Rent" signs or other signs or advertising posters of any kind shall be maintained or permitted on any portion of the Property without the express written permission of the Board of Directors of the Association first had and obtained, and the approval of signs and posters shall be upon such conditions as may from time to time be determined by the Board of Directors. Notwithstanding the foregoing, the provisions of this Section 9.03 shall not apply to any signs maintained on the Property by Declarant, its agents, representatives, or assigns, during the period that Declarant has any Condominium Unit for sale, or to a "For Sale" sign posted by a mortgagee who becomes the Owner of a Condominium Unit as purchaser at a judicial or foreclosure sale conducted with respect to a first or secondary purchase money mortgage or as transferred pursuant to any proceeding in lieu thereof, subject to reasonable rules and regulations established by the Board of Directors with respect to such "For Sale" signs.

9.04 Pets. No pets shall be permitted in the Condominium except that one generally recognized household pet weighing less than thirty (30) pounds when fully grown may be owned and kept by an Owner or occupant of a Unit, provided that no more than one such pet may be kept as to any Unit. Such a pet may be kept and maintained solely as a domestic pet and not for commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any pet shall be constructed or maintained on any part of the common elements, and no such structure shall be constructed or maintained within any deck area unless the same shall be approved in advance in writing by the Board of Directors of the Association. Pets shall be under leash when walked or exercised in any portion of the common elements. No pet shall be permitted to leave its droppings on any portion of the common elements, and the owner of such pet shall immediately remove the same. Upon the written request of any Unit Owner, the Board of Directors of the Association shall conclusively determine, in its sole and absolute discretion; whether, for the purpose of this Section 9.04, a particular pet is permitted or such pet is a nuisance, and shall have the right to require the owner of a particular pet to remove such pet from the Condominium if such pet is found to be a nuisance or to be in violation of these restrictions. In addition to any other remedies provided herein, the Board of Directors shall have the further right to fine any Unit Owner for the violation of these pet restrictions by such Owner or an occupant of his Unit in an amount not to exceed \$25.00 per violation, and any Unit Owner shall be liable to the Association for the cost of repair of any damage to the common elements caused by the pet of such Owner or of an occupant of such Owner's Unit, and the same shall be added to and become part of that portion of any assessment next coming due to which such Unit Owner is subject.

9.05 Use of Common Elements. The use and enjoyment of the common elements by the Unit Owners, their families, visitors, guests, servants and agents, shall be subject to such reasonable

rules and regulations as may be made and amended from time to time in accordance with Section 6.04 of this Declaration. It is expressly acknowledged and agreed by all Owners, by acceptance of a deed or other conveyance to a Condominium Unit, that this Section 9.05 is for the mutual benefit of all Owners in the Condominium and is necessary for the protection of all Owners.

9.06 Antennas. No antenna or other device for the transmission or reception of television signals, radio signals, or any form of electromagnetic radiation shall be erected, used, or maintained outdoors on any portion of the Property, whether attached to a building or structure or otherwise; provided, however, that Declarant and the Association shall have the right to erect, construct and maintain such devices.

9.07 Motor Vehicles, Trailers, Boats, etc. Automobiles shall be operated and parked only upon those portions of the common elements designated for such purpose by the Site Plan or by the Board of Directors of the Association. Other motor vehicles, including without limitation mobile homes, motor homes, trucks, truck campers, trailers of any kind and boats, shall be kept, placed, stored, parked, maintained or operated only upon those portions of the Property, if any, designated specifically for such purpose by the Board of Directors of the Association. Further, although not expressly prohibited hereby, the Board of Directors of the Association may prohibit mobile homes, motor homes, oversized trucks, truck campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts and other such contrivances, or any of them, from being kept, placed, stored, maintained or operated upon any portion of the Property if in the opinion of the Board of Directors such prohibition shall be in the best interests of the Condominium.

9.08 Nuisance. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property, except in containers specially designated for such purpose, nor shall any odors be permitted so as to render any portion of the Property unsanitary, unsightly, offensive or detrimental to persons using or occupying other portions of the Property. No nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to persons using or occupying other portions of the Property. Without limiting the generality of any of the foregoing provision, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, which shall be subject to the reasonable control of the Board of Directors, shall be located, used or placed on the Property. Any Unit Owner, or his family, servants, agents or guests, who shall dump or place any trash or debris upon any portion of the Property, except in the containers described above, shall be liable to the Association for the actual cost of the removal thereof or a fine not to exceed \$25.00, whichever is greater, and the same shall be added to and become part of that portion of any assessment next coming due to which the Unit Owner is subject.

9.09 Prohibited Activities. Noxious or offensive activities shall not be carried on in any Unit or in any part of the common elements. Each Unit Owner, his family, visitors, guests, servants and agents, shall refrain from any act or use of his Unit or the common elements which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the occupants of the Units, or which could result in the cancellation of insurance on any Unit or any portion of the common elements, or which would be in violation of any law or governmental code or regulation. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkept conditions, shall not be pursued or undertaken on any portion of the Property.

9.10 Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Property shall be observed. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

9.11 Exterior Appearance. To provide a neat, attractive and harmonious appearance throughout the Condominium, no awnings, shades, screens or other item shall be attached to, hung or used on the exterior of any window or door of a Unit or on the exterior of any building without the prior written consent of the Board of Directors of the Association or an architectural committee appointed by the Board of Directors. Further, no foil or other reflective material shall be used on any windows for sun screens, blinds, shades or any other purpose. All shades, drapery linings and other window treatments visible from the exterior of a Unit on any window or door shall be white or off-white. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained on any portion of the Property, nor shall any clothing, rugs or any other item be hung on any railing enclosing any deck. The design, type, location, size, intensity and color of all exterior lights (including both those mounted as part of the original construction of the Property or otherwise in place at the time of the conveyance of a Unit to an Owner and those mounted with the consent of the Board of Directors) shall be subject to the control of the Board of Directors.

9.12 Sale Period. Notwithstanding any provisions contained in this Declaration to the contrary, during the period of sale of the Condominium Units (including any Condominium Units located on the Additional Property) or the period of the development of the Additional Property for so long as Declarant has the unexpired option to add the Additional Property or any portion thereof to the Condominium, it shall be expressly permissible for Declarant, its agents, assigns and representatives, to maintain and carry

on, upon such portion of the Property or the Additional Property as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the completion and sale of the Condominium Units or the development of the Additional Property, including, but without limitation, business offices, signs, model units and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use the parking facilities on the Property and the Additional Property for such purposes and to use the Units owned by Declarant as model Units and as offices for the sale of the Condominium Units and related activities.

9.13 Sale or Leasing. The following provisions shall apply to sales, leases or subleases of Condominium Units:

(a) The right of any Unit Owner, including Declarant, to sell, transfer or convey fee title to the Condominium Unit owned by such Owner shall not be subject to any right of first refusal or any similar restriction in favor of the Association.

(b) The Board of Directors shall have the right to approve any lease by the Owner or lessee of any Condominium Unit, provided that such approval shall not be unreasonably withheld. All leases shall be required to be in writing and prior to entering into any lease of a Condominium Unit, the Owner or other person entering into such lease shall submit a copy of the proposed lease to the Board of Directors for approval. The Board of Directors shall, within ten (10) days, furnish to such Owner or other person and the proposed lessee a statement certifying as to whether or not the Board of Directors has approved the lease, and if not approved, the reasons for disapproval. In the event of the failure of the Board of Directors to furnish such statement within such ten (10) day period, such lease shall be deemed to have been approved. No person may lease less than an entire Condominium Unit, and the term of any lease shall not be less than one (1) year and shall not be longer than as may be approved by the Board of Directors. Any lease shall be subject in all respects to the provisions of this Declaration and the By-Laws and rules and regulations of the Association; any failure by the lessee to comply with the terms of such documents shall be a default under the lease, and any lease shall so provide. Any occupancy of a Unit by more than one roommate of an Owner or lessee of such Unit shall be deemed to be a lease of the Unit and shall be subject to the provisions of this paragraph. In the event of the non-compliance by any tenant of a Condominium Unit with the terms of such documents, the Board of Directors shall have the right to require the Owner or lessee of such Condominium Unit to terminate such lease because of such default and to levy an assessment against the Owner of such Condominium Unit for any charge or fine made by the Association incurred as a result of such non-compliance. Prior to the commencement of any lease of a Condominium Unit, the Unit Owner or lessee shall provide the Secretary of the Association and the managing agent of the Association, if any, with the name of the lessee, the term of the

lease and a copy of the lease.

(c) Any of the foregoing provisions of this paragraph 9.13 which may be construed to the contrary notwithstanding, the lease by Declarant of any Condominium Unit owned by Declarant or the lease by a mortgagee who becomes the Owner of a Condominium Unit at a judicial or foreclosure sale conducted with respect to the mortgage on such Condominium Unit or as transferee pursuant to any proceeding in lieu thereof, so long as such Condominium Unit is owned by such person, shall not be subject to the provisions of this paragraph 9.13, except that the occupancy of any Condominium Unit by any lessee of Declarant or such person shall be otherwise subject to the provisions of this Declaration and the By-Laws and rules and regulations of the Association.

## ARTICLE X

### GENERAL PROVISIONS

10.01 Amendment. This Declaration and the other condominium instruments may be amended at any time and from time to time by the assent of the Unit Owners having at least two-thirds (2/3) of the total vote of the Association; provided, however, that during such time as Declarant has the right to appoint and remove members of the Board of Directors and officers of the Association pursuant to Section 6.01, such amendment shall require the agreement of Declarant and the agreement of Unit Owners to which two-thirds (2/3) of the votes in the Association appertain, exclusive of any vote or votes appertaining to any Condominium Unit or Units then owned by Declarant. In addition this Declaration and the other condominium instruments may be amended in such respect and in such manner as may be expressly permitted by the provisions of the Act and this Declaration for the purpose of assigning and reassigning limited common elements and other purposes. So long as the same shall not (a) adversely affect the title to any Condominium Unit, (b) change the percentage of undivided ownership interest in and to the common elements of the Condominium appurtenant to any Condominium Unit, (c) materially alter or change any Unit Owner's right to the use and enjoyment of his Unit or the common elements as set forth in this Declaration, or (d) other-wise make any material change in this Declaration, each Unit Owner, by acceptance of a deed or other conveyance to a Condominium Unit, agrees that, if requested to do so, such Unit Owner will consent to and, upon the request of the Board of Directors of the Association, will execute an amendment of this Declaration or the other condominium instruments or the By-Laws or Articles of Incorporation of the Association, (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with, or remove any conflict or inconsistency with, the provisions of any applicable governmental statute, rule, regulation, including without limitation the provisions of the Georgia Condominium Act, or judicial determination which shall be in conflict therewith, (ii) if such amendment is required by the governmental statutes, laws, rules or regulations applicable to or promulgated by a



governmental or quasi-governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Condominium Unit, (iii) if any such amendment is necessary to enable any governmental agency to insure mortgage loans on the Condominium Units based on the statutes, laws, rules or regulations applicable to or promulgated by such agency, or (iv) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Condominium Units. Except as expressly permitted or required by the Georgia Condominium Act and the provisions of this Declaration, any amendment to this Declaration or other condominium instruments which would change the boundaries of any Unit, the undivided interest in the common elements, the number of votes in the Association or the liability for common expenses appertaining to any Condominium Unit shall be approved in writing by all Unit Owners and all holders of all mortgages encumbering the Condominium Units. Any amendment to this Declaration or the other condominium instruments which would change, alter, modify or rescind any right, title, interest or privilege herein expressly granted to the holders of any first mortgages affecting any of the Condominium Units, shall require the prior written approval of two-thirds (2/3) of such holders. Amendments to this Declaration or the other condominium instruments may be proposed by Declarant, by the Board of Directors of the Association, or by petition signed by Unit Owners having at least thirty (30%) percent of the total votes of the Association. Agreement of the required majority of Unit Owners to any amendment of the condominium instruments shall be evidenced by their execution of the amendment, or, in the alternative and provided that Declarant does not then have the right to appoint and remove members of the Board of Directors or officers of the Association, the sworn statement of the President, any Vice President or Secretary of the Association, attached to or incorporated in an amendment executed by the Association, in which sworn statement it is stated unequivocally that agreement of the required majority of Unit Owners was otherwise lawfully obtained. Any such amendment of the condominium instruments, including this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself. The written consent of any mortgagees required with respect to such amendment shall also be recorded with such amendment. With regard to the approval of amendments to this Declaration or the other condominium instruments by the holder of any mortgage, any such holder who receives a written request to approve any such amendment, and who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

10.02 Eminent Domain. In the event that all or part of the Property shall be taken by any authority having the power of eminent domain, the allocation of the award of such condemnation and all related matters, such as the reallocation of undivided

interests in the common elements, liabilities for assessments and votes shall be handled pursuant to and in accordance with the then applicable provisions of the Georgia Condominium Act. If there are no such provisions of the Act then in effect, the allocation of the award and related matters shall be handled pursuant to and in accordance with those provisions of the Act relating thereto in effect as of the date hereof. If any Unit or portion thereof or the common elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any first mortgage on a Condominium Unit will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this Declaration or of any other document establishing the Condominium will entitle the Owner of a Condominium Unit or other party to priority over such holder with respect to the distribution of the proceeds of any award or settlement relating to such Condominium Unit.

10.03 **Conflict with "FHLMC" and "FNMA".** If any conflict shall exist between the terms of this Declaration and any regulation or other requirement of the Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") and such regulation or requirement is not the subject of a valid and subsidiary waiver thereof by FHLMC or FNMA, then this Declaration shall be deemed, without the necessity of any further act or documentation, to have been amended so as to be consistent with such more restrictive regulation or requirement.

10.04 **Rights of Third Persons.** This Declaration shall be recorded pursuant to the provisions of the Georgia Condominium Act for the benefit of Declarant, the Unit Owners and their mortgagees as herein provided and by such recording no adjoining property owner or third party shall have any right, title or interest whatsoever in the Condominium or in the operation or continuation thereof or in the enforcement of the provisions hereof, and, subject to the rights of Declarant and such mortgagees as herein provided, the Unit Owners shall have the right to cancel, extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third party.

10.05 **Partition, Termination and Withdrawal of Property.** The common elements shall remain undivided, and unless the condominium form of ownership hereby established is terminated or the Property is withdrawn from the Condominium, as hereinafter provided, no Unit Owner nor any other person shall bring any action for partition or division of the whole or any part of any Condominium Unit or of the whole or any part of the common elements. The condominium may be terminated or a portion of the Property may be withdrawn from the Condominium only in strict accordance with and pursuant to the then applicable provisions of the Georgia Condominium Act, and all matters relating to such termination or withdrawal shall be handled in accordance with such provisions of the Act. If there are no such provisions of

the Act then in effect, then such termination or withdrawal and related matters shall be handled pursuant to and in accordance with those provisions of the Act relating thereto in effect as of the date hereof.

10.06 **Enforcement.** Each Unit Owner shall comply strictly with the covenants, conditions and restrictions set forth in this Declaration, the By-Laws and the rules and regulations of the Association now or hereafter adopted, as the same may be lawfully amended from time to time. In the event of a violation or breach, or threatened violation or breach, of any of the same, the Association or, in a proper case, any aggrieved Unit Owner or Owners, jointly and severally, shall have the right to proceed at law or in equity to compel compliance therewith or to prevent a threatened violation or breach thereof. In addition to all other remedies, the Association, or a duly authorized agent thereof, shall have the right to enter upon any portion of the common elements, including any limited common elements, where a violation exists and, at the expense of the violating Unit Owner, and using such force as may be reasonably necessary, summarily abate or remove any erection, thing or condition that may be or exist contrary to the intent and meaning of the provisions hereof or of the By-Laws or rules and regulations, if after ten (10) days written notice of such violation, it shall not have been corrected by such Unit Owner. Neither the Association, nor its agents, shall be deemed guilty or liable for any manner of trespass for such entry, abatement, or removal. Should the Association employ legal counsel to enforce any of the foregoing or any other rights or remedies of the Association, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the violating Unit Owner. Inasmuch as the enforcement of the provisions of this Declaration and the By-Laws and such rules and regulations is essential for the protection of present and future Unit Owners, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages, and that the Association or, in any proper case, any aggrieved Unit Owner or Owners, in addition to all other remedies may require and shall be entitled to the remedy by injunction to restrain any such violation or breach or threatened violation or breach. Further, in addition to the foregoing remedies, the Association may, in any case of flagrant or repeated violation by a Unit Owner, suspend temporarily the voting rights of a Unit Owner after failure of such Owner to cure such violation within ten (10) days after written notice to such Owner, and the Association shall also have the right to levy fines against a Unit Owner for such violation, provided that no fines may be levied for more than \$25.00 for any one violation, but each day or time a violation is continued or repeated after written notice is given to the Unit Owner to cease and desist, it shall be considered a separate violation. Collection of fines may be enforced against a Unit Owner as if such charges were a common expense owned by the Unit Owner involved, and such charges may be added to and thereupon shall become part of that portion of any assessment next coming due to which the Unit Owner is subject. No delay, failure or omission on the part of the

Association or any aggrieved Unit Owner or Owners in exercising any right, power or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to do so thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whomsoever against the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, of the provisions and regulations, however long continued, or for the imposing of provisions which may be unenforceable.

10.07 Right of Action. Each Owner hereby acknowledges and agrees that the Association shall not be entitled to institute any legal action against anyone on behalf of any or all of the Unit Owners which is based on any alleged defect in any Unit or the common elements, or any damage allegedly sustained by any Unit Owner by reason thereof, but rather, that all such actions shall be instituted by the Unit Owners owning such Units or served by such common elements or allegedly sustaining such damage.

10.08 Duration. Unless the Condominium is terminated as herein otherwise provided, the provisions of this Declaration shall run with and bind the land, shall be binding upon and inure to the benefit of all Owners and mortgagees, their heirs, executors, legal representatives, successors and assigns, and shall be and remain in effect perpetually to the extent permitted by Georgia Law; provided, however, that so long as Georgia Law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, and it shall be the duty of the Board of Directors of the Association to cause this Declaration to be amended of record when necessary by filing a document bearing the signatures of Unit Owners having a majority of the voting interest in the Association reaffirming and newly adopting such provisions in order that the same may continue to be covenants running with the land of the Condominium. Such adoption by a majority shall be binding on all. Every purchaser or grantee of any interest in any property made subject to this Declaration, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration shall run with and bind the land as provided hereby and agrees to consent to and, upon the request of the Board of Directors, to execute such an amendment reaffirming and newly adopting the provisions of this Declaration.

10.09 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors of the Association, will best effect the intent of the general plan of the Condominium. The provisions hereof shall be liberally

interpreted, and if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The effective date of this Declaration shall be the date of its filing for record on the records of Cobb County, Georgia. In the event of any conflicts or inconsistencies between the Act, the Georgia Nonprofit Corporation Code, this Declaration, the Articles of Incorporation or the By-Laws, the terms and provisions of the Act or the Georgia Nonprofit Corporation Code, as may be applicable, this Declaration, the Articles of Incorporation and the By-Laws, in that order, shall prevail.

10.10 **Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

10.11 **Rights of First Mortgagee.** In addition to the rights of mortgagees elsewhere provided, each holder, insurer or guarantor of a first mortgage of a Condominium Unit shall (a) be entitled to receive timely written notice from the Association of any default by the Owner of a Condominium Unit on which there is a mortgage held, insured or guaranteed by such holder, insurer or guarantor, as applicable, in the performance of such Owner's obligations under this Declaration or the By-Laws or rules and regulations of the Association, including without limitation any delinquency in the payment of assessments or charges, if such default is not cured within sixty (60) days, (b) be entitled to receive timely written notice of and to designate a representative to attend and observe all meetings of Unit Owners, but not meetings of the Board of Directors of the Association, (c) be furnished copies of annual financial reports made to the Unit Owners, and (d) be entitled to receive timely written notice of (i) any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a first mortgage held, insured, or guaranteed by such holder, insurer or guarantor, as applicable, (ii) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, or (iii) any proposed action which would require the consent of a specified percentage of mortgage holders as specified in this Declaration or the By-Laws; provided, however, that such holder, insurer or guarantor shall first file with the Association a written request for such notices and copies, which request shall identify the name and address of such holder, insurer or guarantor and the Unit number or address. Copies of the Articles of Incorporation of the Association, this Declaration, the By-Laws and all other condominium instruments and other rules concerning the Condominium, with all amendments thereto, and the books, records and financial statements of the Association shall at all times during normal business hours be subject to and available for inspection, upon request, by any Unit Owner or his agent or attorney or lender or by any holder, insurer, guarantor of any first mortgage covering a Condominium Unit. Any holder of a

first mortgage covering a Condominium Unit shall be entitled upon request, to a financial statement of the Association for the immediately preceding fiscal year, and such financial statement shall be furnished within a reasonable time following such request. Each Owner of a Condominium Unit, by acceptance of a deed or other conveyance therefor, consents to such notifications and information to be provided to any such mortgage holder, insurer or guarantor by the Association.

10.12 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any Property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

10.13 Captions. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

10.14 Author. This Declaration was prepared by Rollin E. Mallernee II, Tate, Mallernee and Wildau, 400 Colony Square, Suite 1600, Atlanta, Georgia 30361.

IN WITNESS WHEREOF, Declarant has caused this instrument to be executed by its duly authorized officers on the day and year first above written.

BPI CONSTRUCTION CO.

By: *Al Baker, Pres.*

Attest: *A. J. King, Sec.*

*Rollin E. Mallernee II*  
Unofficial Witness

*Stacy S. South*  
Notary Public

Notary Public, Georgia, State at Large  
My Commission Expires July 30, 1988

(Corporate Seal)



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