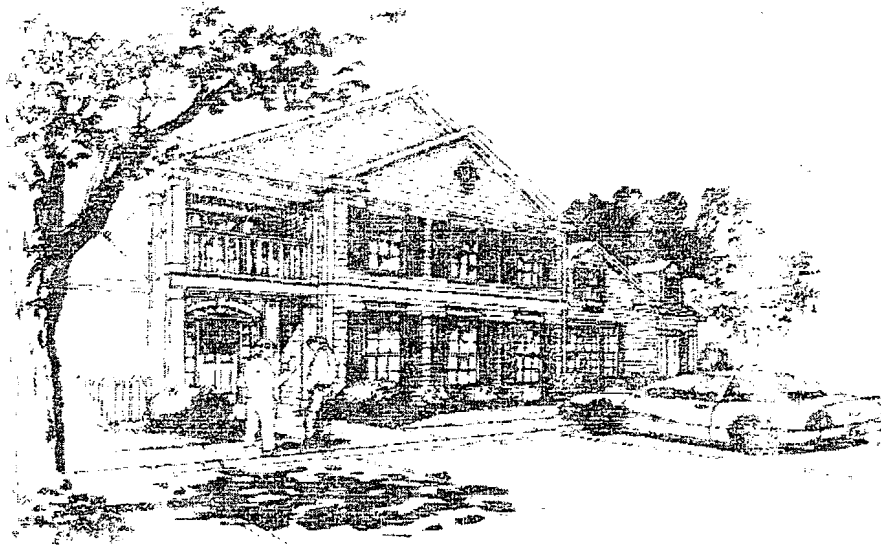


# **WHITLOCK PARK**

**Professional and Medical Center**

## **“Office Cottage” Association Covenants**



**WHITLOCK PARK CENTER, L.L.C.**

**40 Powder Springs Street**

**Marietta, Georgia 30064**

**Phone (770) 425-5880**

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
WHITLOCK PARK MEDICAL AND PROFESSIONAL CENTER

WEISSMAN, NOWACK, CURRY, & ZALEON, P.C.

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Return to:

Weissman, Nowack, Curry & Zaleon, P.C.  
Two Midtown Plaza, 15th Floor  
1349 W. Peachtree Street, NE  
Atlanta, Georgia 30309

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WHITLOCK PARK MEDICAL AND PROFESSIONAL CENTER

THIS DECLARATION is made on the date set forth below by Whitlock Park Dev. 1, L.L.C., a Georgia limited liability corporation (hereinafter referred to as "Declarant");

W I T N E S S E T H

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

WHEREAS, a plat related to the Property prepared by Centerline Surveying Systems, Inc., dated January 16, 1997, was filed in Plat Book \_\_\_\_\_, Page(s) \_\_\_\_\_, Cobb County, Georgia Records; and

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

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR WHITLOCK PARK MEDICAL AND PROFESSIONAL CENTER

1. NAME.

The name of the property is Whitlock Park Medical and Professional Center.

2. DEFINITIONS.

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

(a) Area of Common Responsibility shall mean and refer to the Common Property, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any other person or entity become the responsibility of the Association. The office of any property manager employed by or contracting with the Association, if located on the Property, or any public rights-of-way within or adjacent to the Property, may be part of the Area of Common Responsibility.

(b) Articles or Articles of Incorporation shall mean the Articles of Incorporation of Whitlock Park Medical and Professional Center Owners Association, Inc., which have been filed with the Secretary of State of the State of Georgia.

(c) Association shall mean Whitlock Park Medical and Professional Center Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

(d) Association Legal Instruments shall mean this Declaration and all exhibits to this Declaration, including the By-Laws of the Association, and the plats and plans, all as may be supplemented or amended from time to time.

(e) Board or Board of Directors shall mean the elected body responsible for management and operation of the Association.

(f) By-Laws shall mean the By-Laws of Whitlock Park Medical and Professional Center Owners Association, Inc., attached to this Declaration as Exhibit "B" and incorporated herein by this reference.

(g) Common Property shall mean any and all real and personal property and easements and other interests therein, together with the facilities and improvements located thereon, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

(h) Common Expenses shall mean the expenses anticipated or actually incurred by the Association in maintaining, repairing, replacing, and operating the Common Property and otherwise for the benefit of all Lots.

(i) Community-Wide Standard shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Property. Such standard may be more specifically determined by the Board of Directors of the Association and the Architectural Control Committee. This determination, however, must be consistent with the community-wide standard originally established by the Declarant.

(j) Declarant shall mean and refer to Whitlock Park Dev. 1, L.L.C., a Georgia limited liability corporation and such of its successors-in-title who shall (i) acquire from Declarant and for the purpose of development and sale, all or any portion of the real property described in Exhibit "A" or "B" hereto, and (ii) be designated as the "Declarant" in the deed of transfer by which such successors-in-title shall so acquire its interest in such real property or in a separate document transferring

the rights of the Declarant, recorded in the Cobb County, Georgia records, unless a holder of the Existing First Mortgage shall acquire record title to all or any portion of the real property described in Exhibit "A" or "B" hereto through the exercise of the power of sale set forth in the Existing First Mortgage, in which event the said holder shall automatically be and become the "Declarant" upon its acquisition of such record title.

In all events there shall only be one "Declarant" at any one time; in no event shall more than one Person have the right to exercise the power and authority of the "Declarant" at any one time.

(k) Eligible Mortgage Holder shall mean those holders of first mortgages secured by Lots in the Property who have requested notice of certain items as set forth in this Declaration.

(l) Lot shall mean a portion of the Property intended for individual ownership and use as permitted in this Declaration and as shown on the plats for the Property, or amendments or supplements thereto, recorded in the Cobb County, Georgia land records.

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

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

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

(p) Occupant shall mean any Person occupying all or any portion of a dwelling or other property located within the Property for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

(q) Officer shall mean those individuals who are elected by the Board to serve as President, Vice President, Secretary, or Treasurer, or such other subordinate officers as the Board may determine necessary.

(r) Owner shall mean the record title holder of a Lot within the Property, but shall not include a Mortgage Holder.

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

(t) Property shall mean that real estate which is submitted to the provisions of this Declaration, as described in Exhibit "A" attached hereto and incorporated herein by reference and (i) such additions thereto as may be made by Declarant by Supplementary Declaration of all or any portion of the real property described in Exhibit "B"; and (ii) such additions thereto as may be made by the Association by Supplementary Declaration of other real property.

(u) Supplementary Declaration means an amendment or supplement to this Declaration which subjects additional property to this Declaration or imposes additional restrictions and obligations on the property, or both.

(v) Unit means the structure constructed on a Lot.

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

(a) Property Subject to this Declaration. The Property subject to this Declaration is located in Land Lot 1226, of the 16th District of Cobb County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, which

exhibit is specifically incorporated herein by this reference. A plat of survey relating to the Property has been filed in Plat Book \_\_\_\_, Page \_\_\_\_, of the Cobb County, Georgia records. The plat of survey is incorporated herein by reference as fully as if the same were set forth in their entirety herein.

(b) Other Property. Only the real property described in Section a of this Paragraph 3 is made subject to this Declaration. However, by one or more Supplementary Declarations, Declarant and the Association have the right, but not the obligation, to subject all or any part of other real property described in Exhibit "B" to this Declaration, as provided in Paragraph 10.

#### 4. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS.

(a) Membership. Every Owner shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot owned. In the event of multiple Owners of a Lot, votes and rights of use and enjoyment shall be as provided in this Declaration and in the By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member's spouse, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

(b) Voting. Members shall be entitled to one (1) equal vote for each Lot owned. When more than one (1) Person holds an ownership interest in any Lot, the vote for such Lot shall be exercised as those Owners determine among themselves and advise the Secretary prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one (1) Person seeks to exercise it.

#### 5. ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

Except as otherwise provided herein, each Lot is hereby allocated equal liability for Common Expenses.

(a) Except as provided below, or elsewhere in the Association Legal Instruments, the amount of all Common Expenses shall be assessed against all the Lots.

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

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

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

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

6. ASSOCIATION RIGHTS AND RESTRICTIONS.

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

(a) to enter into Lots for maintenance, emergency, security, or safety purposes, or otherwise to discharge its powers or responsibilities hereunder, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Lot;

(b) to make and to enforce reasonable rules and regulations governing the use of the Property, including the Lots and the Common Property;

(c) to enforce use restrictions, other Declaration and By-Laws provisions, and rules and regulations by the imposition of reasonable monetary fines and suspension of use and voting privileges as provided herein. These powers, however, shall not be construed as limiting any other legal means of enforcing the use restrictions or rules and regulations of the Association, by either the Association or, in an appropriate case, by an aggrieved owner. Any fines imposed shall be considered an assessment against the Lot and may be collected in the manner provided for collection of other assessments;

(d) to grant permits, licenses, utility easements, and other easements, permits, or licenses necessary for the proper maintenance or operation of the Property under, through, or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Property;

(e) to control, manage, operate, maintain, improve and replace all portions of the Property for which the Association is assigned maintenance responsibility under this Declaration;

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

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

7. ASSESSMENTS.

(a) Purpose of Assessment. The Association shall have the power to levy assessments as provided herein. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots in the Property as may be more specifically authorized from time to time by the Board. Assessments may be used to compensate officers and directors only if approved by a majority vote of the Association.

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

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted under Georgia law, shall be a charge on the Lot and shall be a

continuing lien upon the Lot against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors; unless otherwise provided, the annual assessments shall be paid in equal monthly installments due on the first day of each calendar month. No Owner may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Property, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

The lien provided for herein shall be superior to all other liens and encumbrances on such Lot, except for liens of ad valorem taxes and liens for all sums unpaid on a first Mortgage only if such first Mortgage was recorded prior to the delinquent assessment or charge was first due. The sale or transfer of any Lot pursuant to foreclosure of a first Mortgage, or any proceeding in lieu thereof, shall extinguish the lien for assessments as to payments coming due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter coming due or from the lien thereof.

(c) Date of Commencement of Assessments. Assessments shall commence as to a Lot on the first day of the month following the conveyance of the Lot to a Person other than the Declarant. Assessments shall commence on Lots containing occupied units that are owned by Declarant on the first day of the month following the occupancy of the unit located on the Lot. Assessments shall be due and payable in a manner and on the schedule that the Board of Directors provides. Lots which have not been conveyed as provided above shall not be subject to assessment. The first annual common assessment shall be adjusted according to the number of months then remaining in that fiscal year.

(d) Delinquent Assessments. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

(i) If any monthly installment of annual assessments or any part thereof is not paid in full by the tenth (10th) day of the month or if any other charge is not paid within ten (10) days of the due date, a late charge equal to the greater of fifty (\$50.00) dollars or ten (10%) percent of the amount not paid may be imposed without further notice or warning to the delinquent Owner and interest at the highest rate permitted under Georgia law shall accrue from the due date.

(ii) If part payment of assessments and related charges is made, the amount received shall be applied first to costs then to attorney's fees, then to late charges, then to interest, then to delinquent assessments, and then to current assessments.

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

(iv) If assessments and other charges or any part thereof remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board of Directors, may institute suit to collect all

amounts due pursuant to the provisions of the Declaration, the By-Laws, and Georgia Law and suspend the Owner's right to use the Common Property (provided, however, the Board may not limit ingress or egress to or from the Lot).

(e) Computation of Operating Budget and Assessment. It shall be the duty of the Board at least sixty (60) days prior to the beginning of the Association's fiscal year to prepare a budget covering the estimated costs of operating the Property during the coming year. The Board shall cause the budget and notice of the assessments to be levied against each Lot for the following year to be delivered to each member at least thirty (30) days prior to the Association's annual meeting. The budget and the assessment shall become effective unless disapproved at a duly called and constituted meeting of the Association by a vote of a majority of the total Association membership and the Declarant (so long as the Declarant has an option to unilaterally subject additional property to this Declaration); provided, however, if a quorum is not obtained at the meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting. Notwithstanding the foregoing, however, in the event that the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year, and the Board may propose a new budget at any time during the year by causing the proposed budget and assessment to be delivered to the members at least thirty (30) days prior to the proposed effective date thereof. Unless a special meeting is requested by the members, as provided in the By-Laws for special meetings, the new budget and assessment shall take effect without a meeting of the members.

The budget shall reflect all amounts to be received from assessments, from all easement agreements and shared cost agreements with other entities or persons, and from all other sources.

The common assessment to be levied against each Lot for the coming year shall be set at a level which is reasonably expected to produce total revenue to the Association equal to the total budgeted common expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment on the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

The common assessment for the first fiscal year of the Association during which assessments are levied shall be:

- 1) for a 1316 square foot unit - \$948.00 (\$79.00 per month);
- 2) for a 2171 square foot unit - \$1548.00 (\$129.00 per month); and
- 3) for a 2634 square foot unit - \$1908.00 (\$159.00 per month).

So long as Declarant has the right to annex unilaterally additional property Declarant reserves the right to construct other size units. The initial assessment and the size of the unit shall be added to this Paragraph 7(e) by amendment in accordance with Paragraph 10. After that initial fiscal year if a budget is adopted by the Board of Directors which requires an assessment increase from the previous year against the Owners in an amount which exceeds fifteen percent (15%) then the budget must be approved at an annual or special meeting of the Association by members holding a Majority of the total Association vote other than the Declarant.

(f) Capitalization of Association. Upon acquisition of record title to a Lot by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to two months of assessments per Lot. This amount shall be in addition to, not in lieu of, the annual Common Assessment levied on the Lot and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the

Association for use in covering operating expenses and other expenses incurred by the Association pursuant to the terms of this Declaration and the By-Laws.

(g) Special Assessments. In addition to the annual assessment provided for in subparagraph (b) above, the Board may at any time levy a special assessment against all Owners, notice of which shall be sent to all Owners; provided, however, prior to becoming effective, any special assessment which would cause the total of special assessments levied against any Lot in one calendar year to exceed three hundred (\$300.00) dollars (except as provided in Paragraph 9(b) herein, regarding repair or reconstruction of casualty damage to or destruction of all or part of the Property) first shall be approved by the affirmative vote of at least two-thirds (2/3) of Owners present or represented by proxy at a special or annual meeting of the members, notice of which shall specify that purpose and the Declarant (so long as the Declarant has an option to unilaterally subject additional property to this Declaration).

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

(i) Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Lot. The Association shall respond in writing within five (5) days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding fifty (\$50.00) dollars, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein.

(j) Surplus Funds and Common Profits. Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, either be distributed equally to the Owners or credited to the next assessment chargeable to the Owners, or added to the Association's reserve account.

#### 8. INSURANCE.

(a) The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property. This insurance shall include fire and extended coverage, including coverage for vandalism and malicious mischief and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

(b) The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars.

(c) All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee, for the respective benefitted

parties, as further identified in subparagraph (ii), below. Such insurance shall be governed by the provisions hereinafter set forth:

(i) All policies shall be written with a company licensed to do business in Georgia.

(ii) All policies on the Common Property shall be for the benefit of the Association and its members.

(iii) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(iv) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(v) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available.

(vi) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(A) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants, agents, and guests;

(B) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(C) a provision that no policy may be canceled, invalidated, suspended or subjected to nonrenewal on account of any one or more individual Owners;

(D) a provision that no policy may be canceled, invalidated, suspended, or subjected to nonrenewal on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(E) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(F) that no policy may be canceled or substantially modified or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association.

(d) In addition to the other insurance required by this Paragraph, the Board shall obtain workmen's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds or dishonesty insurance. The amount of fidelity coverage shall be determined in the directors' best business judgment, but if reasonably available, shall not be less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on financial controls which take one or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank

statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two members of the Board of Directors must sign any checks written on the reserve account. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of The Mortgage Corporation or the Federal National Mortgage Association.

(e) Individual Insurance. The Association does not maintain insurance on the improvements on Lots. By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that such Owner shall carry blanket all-risk casualty insurance, if reasonably available, or if not reasonably available, fire and extended coverage, on his or her Lot and structures constructed thereon meeting the same requirements as set forth in subparagraphs (a) and (c) of this Paragraph for insurance on the Common Property. Each Owner further covenants and agrees that in the event of damage and destruction of structures on his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Paragraph 9 of this Declaration, unless a determination not to rebuild is made in accordance with Paragraph 9 hereof. The Owner shall pay any costs of repair or reconstruction which is not covered by insurance proceeds. In the event that the structure is totally destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction and thereafter the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with the Community-Wide Standard.

#### 9. REPAIR AND RECONSTRUCTION.

In the event of damage to or destruction of all or any part of the Property as a result of fire or other casualty, unless eighty (80%) percent of the Lot Owners, including the Owner or Owners of any damaged Lot or Lots, vote not to proceed with the reconstruction and repair of the structure, the Lot Owner or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner within seventy-five (75) days after the damage or destruction. However, where repairs cannot be completed within seventy-five (75) days, they shall begin within the required period and shall be diligently and continuously pursued until their completion.

In the event the membership decides not to rebuild a Unit, the owners of the adjoining Units shall be responsible for adding exterior siding or other exterior surfaces on those portions of the Unit that were covered by the destroyed Unit. The exterior building materials shall be consistent with materials used on the Unit.

(a) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Property was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board of Directors.

(b) Encroachments. Encroachments upon or in favor of Lots which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Lot Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Property was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

10. ANNEXATION OF ADDITIONAL PROPERTY.

(a) Unilateral Annexation by Declarant.

(i) As the owner or, if not the owner, with the consent of the owner, Declarant shall have the unilateral right, privilege, and option from time to time at any time until seven (7) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "B", attached and made a part of this Declaration, to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Cobb County, Georgia, records a Supplementary Declaration describing the property being annexed. Any annexation shall be effective upon the filing for record of a Supplementary Declaration unless a different effective date is provided in the Supplementary Declaration.

(ii) The rights reserved to Declarant to subject additional land to the Declaration shall not impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained in the Declaration upon the additional land.

(b) Other Annexation. Subject to the consent of the owner and the consent of the Declarant (so long as the Declarant has an option to subject additional property to this Declaration as provided above) upon the affirmative vote, or written consent, or any combination thereof, of Owners holding a Majority of the total Association vote, the Association may annex real property to the provisions of this Declaration and the jurisdiction of the Association by filing for record in the Cobb County, Georgia, records a Supplementary Declaration describing the property being annexed. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided in the Supplementary Declaration.

(c) Withdrawal of Property. Declarant reserves the right to amend this Declaration unilaterally at any time so long as it holds an unexpired option to expand the Community pursuant to this Article, without prior notice and without the consent of any Person, for the purpose of removing certain portions of the Community then owned by the Declarant or its affiliates from the provisions of this Declaration to the extent originally included in error or as a result of any changes whatsoever in the plans for the Community desired to be effected by the Declarant.

11. ARCHITECTURAL CONTROLS.

(a) Architectural Standards. Except as provided herein, no Owner, Occupant, or any other person may make any encroachment onto the Common Property, or make any exterior change, alteration, or construction (including painting and landscaping), nor erect, place or post any object, sign, exterior sculpture, fountains, flags, or other thing on the exterior of the buildings, in any windows (including the interior of the windows which are visible from the exterior), or on any Common Property, without first obtaining the written approval of the Architectural Control Committee. The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing buildings, Lots and structures, and the location in relation to surrounding structures and topography.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the Committee may reasonably require. The Committee or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction which is not in conformance with approved plans. The Board or the Committee may publish written architectural standards for exterior and Common Property alterations or additions, and any request in substantial compliance therewith shall be approved; provided,

however, each such requested change shall be in harmony with the external design of the existing buildings and Lots and the location in relation to surrounding structures and topography of the vicinity.

The Architectural Control Committee or the Board of Directors, subject to this subparagraph (a), may allow such encroachments on the Common Property as it deems acceptable.

In the event that the Committee or its designated representative fails to approve or to disapprove such application within sixty (60) days after the application and such information as the Committee may reasonably require shall have been submitted, its approval will not be required and this subparagraph (a) will be deemed complied with; provided, however, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the By-Laws, or the rules and regulations.

(b) Architectural Control Committee. The Architectural Control Committee shall constitute a standing committee of the Association. The Committee shall consist of the Board of Directors unless the Board delegates to other Lot Owners the authority to serve on the Committee. The Board may delegate such authority to individual Lot Owners by resolution, or the Board may call for a special election by the Association to select the Lot Owners to whom the authority shall be delegated. At all times, however, the chairperson of the Committee shall be a member of the Board of Directors.

(c) Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition, or alteration. In the discretion of the Board or the Committee, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

(d) Limitation of Liability. Review and approval of any application pursuant to this Paragraph may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board of Directors nor the Architectural Control Committee shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Association, the Board of Directors, the Architectural Control Committee, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Lot.

(e) No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors and the Architectural Control Committee will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board of Directors or the Architectural Control Committee of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board of Directors or the Architectural Control Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(f) Enforcement. Any construction, alteration, or other work done in violation of this Paragraph shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction,

alteration or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the benefitted Lot and collected as an assessment pursuant to this Declaration.

Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Paragraph and the architectural standards may be excluded by the Board from the Properties, subject to the notice and hearing procedures contained in the By-Laws of the Association. In such event, neither the Association, its officers, or directors shall be held liable to any Person for exercising the rights granted by this Paragraph.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions or those of the Architectural Control Committee.

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

## 12. USE RESTRICTIONS.

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

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

### (a) Use of Units.

Units may be used for commercial and business purposes, as permitted by the zoning regulations applicable to the Property. No residential use is permitted.

(b) Alteration of Units. Subject to the other provisions of this Declaration, Unit Owners may make alterations to the interiors of their Units, relocate the boundaries between adjoining Units. No Unit may be subdivided.

i) Alterations to the Interiors of the Units. If any Owner acquires an adjoining Unit, such Owner shall have the right (subject to the prior written approval of the Mortgagees of the Units involved) to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may, in whole or part, be part of the Common Property, so long as no portion of any load bearing wall or column is materially weakened or removed and no portion of any Common Property is damaged, destroyed or endangered, other than that partition and any chutes, flues, ducts, conduits, wires or other apparatus contained therein which shall be relocated by such Owner if such facilities serve any other part of the Property. The alterations permitted by this subparagraph shall not be deemed an alteration or relocation of boundaries between adjoining Units.

ii) Relocation of Boundaries. Boundaries between adjoining Units may be relocated only in strict accordance with the following procedure and, for

so long as Declarant owns a Unit, only with the prior written consent of the Declarant.

(c) Outbuildings. No structures of a temporary character such as tents, shacks, carports, garage, storage shed or other outbuilding shall be erected by any Owner or Occupant on any portion of the Property, at any time, other than by Declarant.

(d) Use of Common Property. There shall be no obstruction of the Common Property, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Property without prior written Board consent, except for Declarant activities while Declarant owns a Unit or as otherwise specifically provided herein.

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

Noxious, destructive or offensive activity shall not be carried on upon the Property. No Unit Owner or Occupant may use or allow the use of the Unit or any portion of the Property at any time, in any way or for any purpose which may endanger the health, unreasonably annoy or disturb or cause embarrassment, or discomfort to other Owners or Occupants, or in such a way as to constitute, in the Board's sole opinion, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights.

No Owner, Occupant or agent of such Owner or Occupant shall do any work which, in the Board's reasonable opinion, would jeopardize the soundness or safety of the Property or any structure thereon, would reduce the value thereof, or would impair any easement or other interest in the Property, without the prior written consent of all Association members and their Mortgagees.

No damage to or waste of the Common Property, or any part thereof, shall be permitted by any Owner or employee or invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, its employees, guests, invitees, or Occupants of the Unit.

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

(g) Pets. No Owner or Occupant may keep any animals or birds on any portion of the Unit.

(h) Parking. There are no assigned parking spaces. No Owner or Occupant may keep or bring onto the Property more than a reasonable number of vehicles per Unit at any time, as determined by the Board; provided, however, the Board may adopt reasonable rules limiting the number of vehicles which may be parked at the Property. Vehicles only may be parked in designated parking spaces or other areas authorized in writing by the Board.

Disabled and stored vehicles are prohibited from being parked on the Property. For purposes hereof, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered

"stored" if it remains on the Property for seven (7) consecutive days or longer without prior written Board permission.

Boats, trailers, panel trucks, trucks with a load capacity of one (1) ton or more, vans (excluding mini-vans or utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), recreational vehicles (RV's and motor homes), are also prohibited from being parked on the Property. Notwithstanding the above, trucks and vans shall be allowed temporarily on the Common Property during normal business hours for the purpose of serving any Unit or the Common Property; provided, that no such vehicle shall be authorized to remain on the Common Property overnight or for any purpose except serving a Unit or the Common Property, without written Board consent.

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

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Unit, is obstructing the flow of traffic, is parked on any grassy area, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. The Association's right to tow is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. The Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

(i) Abandoned Personal Property. Personal property, other than an automobile as provided for in Paragraph 14(h), is prohibited from being stored, kept, or allowed to remain for more than twenty-four (24) hours upon any portion of the Common Property, other than on a Limited Common Element, without prior written Board permission. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property and/or on the front door of the property owner's Unit, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

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

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

(j) Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to the Property, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" position and at a minimum temperature setting of

fifty-five (55°) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two (32°) degrees Fahrenheit or below. Owners and Occupants of Units shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. If during the months specified above the heating equipment is not working properly, the Owner or Occupant shall immediately inform the Board of this failure of the equipment and of the time needed to repair the equipment. The Board may fine any Owner or Occupant and/or cause the water service to the violator's Unit to be discontinued for violation hereof, in addition to any other remedies of the Association.

(k) Signs. Except as may be required by legal proceedings, and except for signs which may be erected by Declarant related to the development and sale of Units, no signs, advertising posters or billboards of any kind including directories on each building, shall be erected, placed, or permitted to remain on the Property without the prior written consent of the Board or its designee, except that one (1) professional security sign not to exceed six inches (6") by six inches (6") in size may be displayed from within a Unit, and one (1) professionally lettered "For Rent" or "For Sale" sign not to exceed two (2') feet by two (2') feet in size may be displayed from within a Unit being offered for sale or for lease. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association including, but not limited to, directories for each building.

(l) Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Property or Limited Common Property outside the Unit, temporarily or otherwise, except as provided herein. Rubbish, trash, and garbage shall be disposed of in sealed plastic bags and either placed in proper receptacles designated by the Board for collection or removed from the Property.

(m) Unightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Property.

(n) Window Treatments. Unless otherwise approved in writing by the Board, all Unit windows shall have window treatments and any portion thereof visible from outside the Unit shall be white or off-white in color.

(o) Sale Period. Notwithstanding any provisions contained in this Declaration to the contrary, during the period of the sale of the Units it shall be expressly permissible for Declarant, its contractors, agents, employees, assigns and representatives, to maintain and carry on, upon such portion of the Property as Declarant may deem necessary, such facilities and activities as in the Declarant's sole opinion may be reasonably required, convenient or incidental to the repair (if any) and sale of the Units, including, but without limitation, business offices, signs, model units and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use the parking facilities on the Property for such purposes and to use the Units owned by Declarant as model Units and as offices for the sale of the Units and related activities.

### 13. LEASING.

(a) General. So long as the Declarant has an option to unilaterally subject additional property to this Declaration, there shall be no leasing of Units or portions of Units for office suites or other shared office arrangements, unless expressly approved by Declarant in writing.

(b) Compliance With Declaration, Bylaws, and Rules and Regulations, Use of Common Property, and Liability for Assessments. Units may be leased only in their entirety. Each Owner and each lessee, by occupancy of a Unit, covenants and agrees

that any lease for a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Unit:

(i) Compliance With Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure such compliance. The Owner shall cause all Occupants of his or her Unit to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any such violation. If the lessee, or lessee's employee, violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with Article V, Section 2 of the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit.

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

(ii) Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Property Common Property.

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

#### 14. SALE OF UNITS.

A Unit Owner intending to make a transfer or sale of a Unit or any interest in a Unit shall give written notice to the Board of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish to the Board as part of the notice (i) the name and address of the intended grantee; and (ii) such other information as the Board may reasonably require. This Paragraph shall

not be construed to create a right of first refusal in the Association or in any third party.

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

15. MAINTENANCE RESPONSIBILITY.

(a) By the Owner. Except to the extent otherwise provided in subparagraph (b) below, each Owner shall have the obligation to maintain and keep in good repair all portions of his or her Unit including the following:

(i) exterior maintenance of the Units, including, but not limited to, painting, repairing, replacing and caring for the following:

(1) roofs (including the roof joists and trusses, crossbeams, roof decking and underlayment, and shingles or other covering and surface materials);

(2) gutters and downspouts, if any;

(3) exterior walls and surfaces bounding the Units, including the brick, wood siding, or other building material forming the exterior walls of the Units or of the building containing the Units;

(4) patios and decks;

(5) exterior stairways, stoops, landings, railings and steps;

(6) projecting cornices and copings;

(7) shutters;

(8) windows, window casings, exterior doors and door frames and caulking of windows;

(9) those portions of the heating and air conditioning systems serving a Unit which are located within the Unit itself, as well as the air conditioning compressor and condenser located outside the Unit; and

(10) other exterior improvements.

(ii) all pipes, lines, ducts, conduits, or other apparatus which serve only the Lot, whether located within or without the boundaries of the Unit (including as, electricity, water or sewer serving only the Unit).

In addition, each Unit Owner shall have the responsibility:

(i) To perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Units.

(ii) To promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.

(b) By the Association. The Association shall maintain and keep in good repair as a Common Expense the "Area of Common Responsibility," which includes all Common Property, including, but not limited to all grass areas, all landscaping, sidewalks, roads, detention ponds, and all utilities serving more than one Unit and not otherwise maintained by the utility provider.

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

The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Unit, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Property or from any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Unit or such Owner's Occupant, guest, or employee, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Property. The Association shall not be liable to any Owner, or any Owner's Occupant, guest or employee for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Paragraph where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association.

In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board.

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

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

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

(d) Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board to another. These variances shall

not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Paragraph. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

16. EASEMENTS.

(a) Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Unit and adjacent portion of the Common Property or as between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered (in accordance with the terms of this Declaration). The easement shall be five (5) feet, as measured from any point on the common boundary between each Unit and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point. However, an easement for encroachment shall not exist if the willful conduct by an Owner, tenant, or the Association caused the encroachment.

(b) Easements for Use and Enjoyment.

(i) Every Owner of a Lot shall have a right and easement of entry and exit, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to his Lot, subject to the following provisions:

(A) The right of the Association to provide for the exclusive use and enjoyment of specific portions of the Common Property at certain designated times by an Owner, his or her family, tenants, guests, and invitees or by a separate group or entity;

(B) the right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against his Lot which is hereby provided for remains unpaid; and, for a reasonable period of time for a violation of the Declaration, Bylaws, or rules and regulations;

(C) the right of the Association to borrow money for the purpose of improving the Common Property, or for constructing, repairing, or improving any facilities located or to be located on the Common Property, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property. However, the Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community (Any provision in this Declaration or in any Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights in the Mortgage by the holder of the Mortgage in the event of a default shall not cancel or terminate any rights, easements or privileges reserved or established in this Declaration for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community.) No mortgage conveying all or a portion of the Common Property shall be effective unless an instrument agreeing to the Mortgage has been approved by Owners holding at least two-thirds (2/3) of the total vote of the Association, by the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X), and by the holder of the Existing First Mortgage (so long as the Existing First Mortgage remains in effect); and

(D) the right of the Association to dedicate or transfer all or any portion of the Common Property subject to any conditions agreed on by the members of the Association and by the holder of the Existing First Mortgage (so long as the Existing First Mortgage remains in effect). No dedication or transfer of the Common Property shall be effective unless an instrument agreeing to the dedication

or transfer has been approved by Owners holding at least two-thirds (2/3) of the total Association vote, by the Declarant (so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX), and by the holder of the Existing First Mortgage (so long as the Existing First Mortgage remains in effect).

(ii) Any Lot Owner may delegate his right of use and enjoyment in and to the Common Property to the members of his family, his tenants and guests. An Owner shall be deemed to have made a delegation of all these rights to the occupants of the Owner's Lot, if leased.

(c) Easements for Utilities. There is reserved to the Declarant, Approved Builders, and the Association blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining (a) all utilities serving the Community or any portion of the Common Property, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, (b) water runoff and storm drainage systems, and (c) any other services such as, but not limited to, a master television antenna system, cable television system, or security system which may be installed to serve the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, to do or to authorize the installation, repairing, replacing, and maintaining of the wires, conduits, cables and other equipment related to providing any such utility or service. Should a party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or Board, as applicable, shall have the right to grant such easement.

(d) Easements for Entry. In addition to the right of the Board to exercise self-help as provided in Paragraph 17, the Board shall have the right, but not the obligation, to enter upon any property within the Community for emergency, security, and safety reasons. This right may also be exercised by the agents of the Association, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. The Board shall have the right to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard if an Owner or occupant does not cure the condition after request by the Board.

(e) Easements for Maintenance. Declarant expressly reserves a perpetual easement for the benefit of the Association across such portions of the Community, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required under Paragraph 15, including, without limitation an easement over Lots on which entry features for the Community are located for maintenance of the entry features. This maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect the property, and damage shall be repaired by the Person causing the damage at its sole expense. In addition, each Lot owner shall afford to the other Lot owners, to the Association, and to any agents or employees of either such access through his Unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. To the extent that damage is inflicted on the common properties, or on any Unit through which access is taken, the Association or Unit owner occasioning the same, whether by itself or himself or through agents, employees, or others, shall be liable for the prompt repair thereof.

#### 17. GENERAL PROVISIONS.

(a) Enforcement. Each Owner and every occupant of a Lot shall comply strictly with this Declaration, the Bylaws, the rules and regulations, as they may be lawfully amended or modified from time to time, and with any deed restrictions. The Board of Directors may impose fines or other sanctions, which shall be collected as provided for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action for damages or injunctive relief, or both, maintainable by the Board of Directors,

on behalf of the Association, or by an aggrieved Owner in a proper case. Failure by the Association or any Owner to enforce any of the foregoing provisions shall not be a waiver of the right to enforce those provisions in the future.

(b) Self-Help. In addition to any other remedies, the Association or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, the Bylaws, or the rules and regulations. All costs of self-help, including reasonable attorney's fees actually incurred shall be assessed against the violating Lot Owner and shall be collected as provided for the collection of assessments.

(c) Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent permitted by law. However, so long as Georgia law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected by the law shall run with and bind the land so long as permitted by the law, after which time the provisions shall be automatically extended for successive periods of twenty (20) years, unless at least fifty-one (51%) percent of the record Owners execute an agreement to prevent renewal of the covenants and such agreement is recorded and an attorney's affidavit confirming ownership of the lots or such other requirement as provided in O.C.G.A. § 44-5-60. A written instrument reflecting termination must be recorded within the year immediately preceding the beginning of any renewal period. Every purchaser or grantee of any interest (including, without limitation, a security interest) in any real property subject to this Declaration, by acceptance of a deed or other conveyance, agrees that provisions of this Declaration may be extended and renewed as provided in this Section.

(d) Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant with the consent of the holder of the Existing First Mortgage (so long as the Existing First Mortgage remains in effect) (a) if an amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, or regulation or judicial determination with which it is in conflict; (b) if an amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if an amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable the lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if an amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration. However, any such amendment shall not adversely affect the title to any Owner's Lot unless the Lot Owner consents to the amendment in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article IX, Declarant with the consent of the holder of the Existing First Mortgage (so long as the Existing First Mortgage remains in effect) may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owner, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination of affirmative vote and written consent, of Owners holding at least two-thirds (2/3) of the total eligible Association vote, the consent of the Declarant (so long as Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article IX), and with the consent of the holder of the Existing First Mortgage (so long as the Existing First Mortgage remains in effect). Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified in the amendment. No provision of this Declaration which reserves, grants, or exempts special rights or exemptions to the Declarant shall be amended without the Declarant's

prior written consent so long as the Declarant or Approved Builder, owns any property in the Community, or which is subject to annexation to the Community, primarily for development and/or sale.

(e) Security. The Association may, but shall not be required to, provide measures or take actions which directly or indirectly improve safety in the Community. However, each Owner, for themselves and their tenants, guests, licensees, and invitees acknowledge and agree that the Association is not a provider of security and shall have no duty to provide security for the Community. It shall be the responsibility of each Owner to protect his or her person and property, and all responsibility to provide security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

(f) Dispute Resolution. Any Owner or occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or occupant files any lawsuit against the Association, the Board, any director, or any agent of the Association. The Owner or occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing.

(g) Partition. The Common Property shall remain undivided, and no Lot Owner or any other Person shall bring any action for partition or division of the whole or any part of the Common Property without the written consent of all Owners and all holders of all Mortgages encumbering any portion of the Community.

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

(i) 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.

(j) 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.

(k) Preparer. This Declaration was prepared by George E. Nowack, Jr., Weissman, Nowack, Curry & Zaleon, P.C., 1349 West Peachtree Street, Two Midtown Plaza, Fifteenth Floor, Atlanta, Georgia 30309.

(l) Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(m) Indemnification. In accordance with the Georgia Nonprofit Corporation Code, and to the full extent allowed by Georgia law, the Association shall indemnify every person who was or is a party or who is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil,

criminal, administrative, or investigative (other than an action by or in the right of the Association), by reason of the fact that such person is or was serving as a director or officer of the Association, against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such person acted in a manner reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. Any indemnification shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the person is proper under the circumstances.

(n) Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the Bylaws, Articles of Incorporation, rules and regulations, Design Guidelines, and any amendments, so long as there is development and construction related to the initial sale of Units constructed on Lots, it shall be expressly permissible for Declarant to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's development, construction, and sales activities related to property described on Exhibit "A" and Exhibit "B" to this Declaration, including, but without limitation the following:

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

(b) the right to tie into any portion of the Community with driveways, parking areas and walkways;

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

(d) the right to carry on sales and promotional activities in the Community; and the right to construct and operate business offices, signs, construction trailers, residences, model residences, and sales offices. Declarant may use residences, offices, or other buildings owned or leased by Declarant as model residences and sales offices and may also use recreational facilities available for use by the Community as a sales office without charge.

Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent so long as the Declarant owns any property in the Community, or which is subject to annexation to the Community, primarily for development and/or sale.

(o) Contracts Executed During Declarant Control. All contracts or leases executed by or on behalf of the Association during the period in which the Declarant has the right to appoint the Directors and officers of the Association under the Bylaws shall contain a termination clause permitting the Association to terminate the contract or lease at any time, without cause and without penalty, upon not more than ninety (90) days' written notice.

(p) Books and Records

(a) All members of the Association and any institutional holder of a first Mortgage shall be entitled to inspect the following records at a reasonable time and location specified by the Association, upon written request at least five (5) days before the date on which the member wishes to inspect and copy:

(i) its Articles or restated Articles of Incorporation and all amendments to them currently in effect;

(ii) its By-Laws or restated By-Laws and all amendments to them currently in effect;

(iii) resolutions adopted by either its members or Board of Directors increasing or decreasing the number of directors or the classification of directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;

(iv) resolutions adopted by either its members or Board of Directors relating to the characteristics, qualification, rights, limitations, and obligations of members or any class or category of members;

(v) the minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;

(vi) all written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;

(vii) a list of the names and business or home addresses of its current directors and officers; and

(viii) its most recent annual report delivered to the Secretary of State.

(b) A member may inspect and copy the following records upon written notice at least five (5) business days before the date on which the member wishes to inspect and copy only if the member's demand is made in good faith and for a proper purpose that is reasonably relevant to the member's legitimate interest as a member; the member describes with reasonable particularity the purpose and the records the member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose:

(i) excerpts from minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the members, and records of action taken by the members or the Board without a meeting, to the extent not subject to inspection under subsection 16(a);

(ii) accounting records of the Association; and

(iii) the membership list only if for a purpose related to the member's interest as a member. Without the consent of the Board, a membership list or any part thereof may not be: used to solicit money or property unless such money or property will be used solely to solicit the votes of the members in an election to be held by the Association; used for any commercial purpose; or sold to or purchased by any person.

The Association may impose a reasonable charge, covering the cost of labor and material, for copies of any documents provided to the Member.

(q) Financial Review. A review of the accounts of the Association shall be made annually in the manner as the Board of Directors may decide; provided, however, after having received the Board's reviewed financial statement at the annual meeting, by a Majority of the Association vote present, or represented by proxy, the Owners may require that the accounts of the Association be audited as a common expense by a public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of an audited financial statement within ninety (90) days of the date of the request.

(r) Agreements. Subject to the prior approval of Declarant (so long as the Declarant has an option to unilaterally subject additional property to this Declaration as provided in Article IX) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

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

(t) Variances. Notwithstanding anything to the contrary contained in this Declaration, the Board of Directors or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

IN WITNESS WHEREOF, the undersigned, being the duly appointed officers of Declarant herein, have executed this instrument and affixed the corporate seal this 21 day of February, 1997.

WHITLOCK PARK DEV. 1, L.L.C.

By: \_\_\_\_\_ [SEAL]

Title: Partner

[CORPORATE SEAL]

Signed, sealed, and delivered this 21 day of February, 1997, in the presence of:

WITNESS [Signature]

Margaret H. Barnett  
NOTARY PUBLIC  
My Commission Expires: 4/30/00

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**EXHIBIT "A"**

**Description of Submitted Property**

All that tract or parcel of land lying and being in Land Lot 1226 of the 16th District, 2nd Section, Cobb County, Georgia, being 2.47 acres designated as Phase 1, Whitlock Park Center, as per plat of survey prepared for Whitlock Park Center, dated January 16, 1997, and prepared by Centerline Surveying Systems, Inc., Charles C. Franklin, G.R.L.S. No. 2143, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, commence at an iron pin located at the intersection of the southerly side of the right of way of Whitlock Avenue (being an 80 foot right of way a/k/a State Route #120) and the easterly side of the right of way of Manning Road (being a 50 foot right of way) and run thence in an easterly direction along the southerly side of the right of way of Whitlock Avenue and following the curvature thereof for a distance of 601.21 feet to a point and corner; continue thence South 1 degrees 53 minutes 54 seconds West for a distance of 243.87 feet to the TRUE POINT OF BEGINNING; from said TRUE POINT OF BEGINNING, running thence South 01 degrees 53 minutes 54 seconds West for a distance of 408.20 feet to an iron pin and corner; running thence North 87 degrees 09 minutes 11 seconds West for a distance of 265.48 feet to a point and corner; running thence North 02 degrees 49 minutes 41 seconds East for a distance of 432.24 feet to a point and corner; running thence South 87 degrees 28 minutes 43 seconds East for a distance of 30.00 feet to a point and corner; running thence South 02 degrees 31 minutes 17 seconds West for a distance of 25.00 feet to a point and corner; running thence South 87 degrees 20 minutes 21 seconds East for a distance of 228.72 feet to the TRUE POINT OF BEGINNING.

TOGETHER WITH a perpetual, non-exclusive 30 foot utility easement for, over, through and across the following described Easement Tract to serve the Submitted Property recorded in Deed Book 9766, Page 0367 of the Cobb County, Georgia land records as follows:

All that tract or parcel of land lying and being in Land Lot 1226 of the 16th District, 2nd Section, Cobb County, Georgia, as per plat of survey prepared for Whitlock Park Center, dated June 25, 1996 and prepared by Charles C. Franklin, G.R.L.S. No. 2143, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, commence at an iron pin located at the intersection of the southerly side of the right of way of Whitlock Avenue (being an 80 foot right of way a/k/a State Route #120) and the easterly side of the right of way of Manning Road (being a 50 foot right of way) and run thence in an easterly direction along the southerly side of the right of way of Whitlock Avenue and following the curvature thereof for a distance of 354.14 feet to the TRUE POINT OF BEGINNING; from said TRUE POINT OF BEGINNING, running thence South 87 degrees 28 minutes 45 seconds East for a distance of 30 feet to a point and corner; running thence South 02 degrees 31 minutes 15 seconds West for a distance of 218.30 feet to a point and corner; running thence North 87 degrees 28 minutes 43 seconds West for a distance of 30.00 feet to a point and corner; running thence North 02 degrees 31 minutes 15 seconds East for a distance of 218.30 feet to the TRUE POINT OF BEGINNING.

**DRAINAGE EASEMENT:**

TOGETHER WITH a perpetual, non-exclusive 20 foot drainage easement for over, through and across the following described Drainage Easement recorded in Deed Book 9766, Page 0367, Cobb County, Georgia land records. The Drainage Easement is more particularly described as follows:

All that tract or parcel of land lying and being in Land Lot 1226 of the 16th District, 2nd Section, Cobb County, Georgia, as per plat of survey prepared for Whitlock Park Center, dated June 25, 1996 and prepared by Charles C. Franklin, G.R.L.S. No. 2143, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, commence at an iron pin located at the intersection of the southerly side of the right of way of Whitlock Avenue (being an 80 foot right of way a/k/a State Route #120) and the easterly side of the right of

way of Manning Road (being a 50 foot right of way) and run thence in an easterly direction along the southerly side of the right of way of Whitlock Avenue and following the curvature thereof for a distance of 601.21 feet to the TRUE POINT OF BEGINNING; from said TRUE POINT OF BEGINNING, running thence South 01 degrees 53 minutes 54 seconds West for a distance of 243.87 feet to a point and corner; running thence North 87 degrees 20 minutes 21 seconds West along the northern boundary of the Submitted Property for a distance of 20.0 feet to a point and corner; running thence North 01 degree 53 minutes 54 seconds East for a distance of 243.61 feet to a point and corner; running thence South 87 degrees 28 minutes 45 seconds East for a distance of 20.0 feet to the TRUE POINT OF BEGINNING.

#### DRIVEWAY EASEMENT

TOGETHER WITH a perpetual non-exclusive access easement over, across, and upon all driveways that may exist from time to time for vehicular ingress and egress to and from Whitlock Avenue across the following property for the benefit of the Submitted Property:

All that tract or parcel of land lying and being in Land Lot 1226, 16th District, 2nd Section, Cobb County, Georgia and being more particularly described as follows:

BEGINNING AT A POINT formed by the Southeast corner of the intersection of Whitlock Avenue (S.R. 120) and Manning Road; thence running along the Southerly right-of-way line of Whitlock Avenue North 00 degrees 15 minutes 54 seconds East 345.14 feet to a point and corner; thence running South 00 degrees 44 minutes 06 seconds East 243.30 feet to a point and corner; thence running South 09 degrees 15 minutes 54 seconds West 339 feet to a point on the easterly side of Manning Road; thence running along the easterly right-of-way of Manning Road, North 02 degrees 10 minutes 40 seconds West 243.37 feet to a point at the intersection and southeast corner of Whitlock Avenue and Manning Road and the Point of Beginning.

**EXHIBIT "B"**

**Description of Additional Property**

All that tract or parcel of land lying and being in Land Lot 1226 of the 16th District, 2nd Section, Cobb County, Georgia, being 4.52 acres designated as Phases 2 and 3, Whitlock Park Center, as per plat of survey prepared for Whitlock Park Center, dated January 16, 1997, and prepared by Centerline Surveying Systems, Inc., Charles C. Franklin, G.R.L.S. No. 2143, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, commence at an iron pin located at the intersection of the southerly side of the right of way of Whitlock Avenue (being an 80 foot right of way a/k/a State Route #120) and the easterly side of the right of way of Manning Road (being a 50 foot right of way) and run thence in an easterly direction along the southerly side of the right of way of Whitlock Avenue and following the curvature thereof for a distance of 601.21 feet to a point and corner to the TRUE POINT OF BEGINNING. From said TRUE POINT OF BEGINNING running thence South 1 degrees 53 minutes 54 seconds West for a distance of 243.87 feet; running thence North 87 degrees 20 minutes 21 seconds West for a distance of 228.72 feet to a point and corner; running thence South 2 degrees 31 minutes 17 seconds East for a distance of 25 feet to a point and corner; running thence North 87 degrees 28 minutes 43 seconds West for a distance of 30 feet to a point and corner; running thence South 2 degrees 49 minutes 41 seconds East for a distance of 432.24 feet to a point and corner; running thence North 87 degrees 9 minutes 11 seconds West for a distance of 326.56 feet to a point and corner; running thence North 1 degree, 5 minutes, 21 seconds East for a distance of 405.50 feet to a point and corner; running thence South 87 degrees 28 minutes 43 seconds East for a distance of 339.00 feet to a point and corner; running thence North 2 degrees 31 minutes 15 seconds East a distance of 243.30 feet to a point on the southeasterly side of the right of way of Whitlock Avenue; running thence in an easterly direction along the southeasterly side of the right of way of Whitlock Avenue South 87 degrees 28 minutes 45 seconds East a distance of 256.07 feet to the TRUE POINT OF BEGINNING.

EXHIBIT "C"

BY-LAWS  
OF  
WHITLOCK PARK MEDICAL AND PROFESSIONAL  
CENTER OWNERS ASSOCIATION, INC.

WEISSMAN, NOWACK, CURRY & ZALEON, P.C.

Attorneys

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BY-LAWS

OF

WHITLOCK PARK MEDICAL AND PROFESSIONAL  
CENTER OWNERS ASSOCIATION, INC.

Article I  
General

Section 1. Applicability. These By-Laws provide for the self-government of Whitlock Park Medical and Professional Center Owners Association, Inc., in accordance with the Articles of Incorporation filed with the Secretary of State and the Declaration of Covenants, Conditions and Restrictions, recorded in the Cobb County, Georgia land records ("Declaration").

Section 2. Name. The name of the corporation is Whitlock Park Medical and Professional Center Owners Association, Inc., ("Association").

Section 3. Definitions. The terms used herein shall have their generally accepted meanings or such meanings as are specified in the Declaration.

Section 4. Membership. An owner of a lot shall automatically become a member of the Association upon taking title to the lot and shall remain a member for the entire period of ownership. As may be more fully provided below, a spouse of a member may exercise the powers and privileges of the member. If title to a lot is held by more than one (1) person, the membership shall be shared in the same proportion as the title, but there shall be only one (1) membership and one (1) vote per lot. Membership does not include persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the owner's membership. Membership shall be appurtenant to the Lot and shall be transferred automatically by conveyance of that Lot and may be transferred only in connection with the transfer of title.

Section 5. Entity Members. In the event an owner is a corporation, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust, or manager of such other legal entity shall be eligible to represent such entity or entities in the affairs of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity or entities which are the owner, and termination of the person's relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving and such vacancy will be filled in accordance with these By-Laws.

Section 6. Voting. Each lot shall be entitled to one equally weighted vote, which vote may be cast by the owner, the owner's spouse, or by a lawful proxy as provided below. When more than one (1) person owns a lot, the vote for such lot shall be exercised as they determine between or among themselves, but in no event shall more than one (1) vote be cast with respect to any lot. If only one (1) co-owner attempts to cast the vote for a lot, it shall be conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such lot. In the event of disagreement between or among co-owners and an attempt by two (2) or more of them to cast such vote or votes, such persons shall not be recognized and such vote or votes shall not be counted. No owner shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, if that owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or if the owner has had its voting rights suspended for the infraction of any provision of the Declaration, these

By-Laws, or any rule of the Association. If the voting rights of an owner have been suspended, that owner shall not be counted as an eligible vote for purposes of establishing a Majority or a quorum or for purposes of amending these By-Laws or the Declaration.

Section 7. Majority. As used in these By-Laws, the term "majority" shall mean those votes, owners, or other group as the context may indicate totalling more than fifty (50%) percent of the total number of eligible votes, owners, or other group, respectively. Unless otherwise specifically stated, the words "majority vote" mean more than fifty (50%) percent of those voting in person or by proxy. Except as otherwise specifically provided in the Declaration or these By-Laws, all decisions shall be by majority vote.

Section 8. Purpose. The Association shall have the responsibility of administering the Property; establishing the means and methods of collecting the contributions to the Common Expenses, if any; arranging for the management of the Property; and performing all of the other acts that may be required to be performed by the Association pursuant to the Georgia Nonprofit Corporation Code and the Declaration. Except as to those matters which the Declaration or the Georgia Nonprofit Corporation Code specifically require to be performed by the vote of the Association membership, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

## Article II Meetings of Members

Section 1. Annual Meetings. The regular annual meeting of the members shall be held during November or December of each year with the date, hour, and place to be set by the Board of Directors.

Section 2. Special Meetings. Special meetings of the members may be called for any purpose at any time by the President, the Secretary, or by request of any two (2) or more members of the Board of Directors, or upon written petition of twenty-five (25%) percent of the lot owners. Any such written petition by the members must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition, and the Secretary shall send notice of the meeting in accordance with these By-Laws.

Section 3. Notice of Meetings. It shall be the duty of the Secretary to mail or deliver to each owner of lots of record or to the lots a notice of each annual or special meeting of the Association at least twenty-one (21) days prior to each annual meeting and at least seven (7) days prior to each special meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it is to be held. The notice of an annual meeting shall state the time and place of the meeting. If any owner wishes notice to be given at an address other than his or her lot, the owner shall have designated by notice in writing to the Secretary such other address. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered proper service of notice.

Section 4. Waiver of Notice. Waiver of notice of meeting of the owners shall be deemed the equivalent of proper notice. Any owner may, in writing, waive notice of any meeting of the owners, either before or after such meeting. Attendance at a meeting by an owner, whether in person or represented by proxy, shall be deemed waiver by such owner of notice of the time, date, and place thereof unless such owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless

objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

Section 5. Quorum. Except as may be provided elsewhere, the presence, in person or by proxy at the beginning of the meeting, of owners entitled to cast one third (1/3) of the eligible vote of the Association shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. Owners whose voting rights have been suspended pursuant to the Declaration or these By-Laws shall not be counted as eligible votes toward the quorum requirement.

Section 6. Adjournment. Any meeting of the owners may be adjourned from time to time for periods not exceeding ten (10) days by vote of the owners holding the Majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.

Section 7. Proxy. Any member entitled to vote may do so by written proxy duly executed by the member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery, U.S. mail or telefax transmission to any Board member or the property manager. Proxies may be revoked only by written notice delivered to the Association, except that the presence in person by the giver of a proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

Section 8. Action Without a Meeting. Any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the Association delivers a written ballot to every member entitled to vote on the matter.

(a) A written ballot shall: (1) set forth each proposed action; and (2) provide an opportunity to vote for or against each proposed action.

(b) Approval by written ballot pursuant to this Section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(c) All solicitations for votes by written ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the corporation in order to be counted.

(d) A written ballot may not be revoked. The Association shall maintain such ballots in its file for a period of at least three (3) years.

Section 9. Order of Business. At all meetings of the Association, Roberts Rules of Order (latest edition) shall govern when not in conflict with the Declaration, these By-Laws or the Articles of Incorporation.

Article III  
Board of Directors

A. Composition and Selection.

Section 1. Composition. The affairs of the Association shall be governed by a Board of Directors. During the time the Declarant has the right to appoint and remove directors and officers of the Association, the Board shall be composed of one (1) person. After Declarant's right to appoint has terminated, the Board shall be composed of three (3) persons. Except for directors appointed by the Declarant, the directors shall be Owners of Units. In the case of an Owner which is a legal entity, the person designation by the governing body of such entity in writing to the secretary of the Association as the representative and such entity shall be eligible to serve as director.

Section 2. Term of Office. Notwithstanding anything to the contrary herein, Declarant shall have exclusive authority to appoint and remove directors and officers until the earlier to occur of: (1) seven (7) years after the recording of this Declaration, (2) the date as of which Units to which four-fifths (4/5ths) of the undivided interests in the Common Elements pertain shall have been conveyed by Declarant to Unit Owners other than a Person constituting the Declarant, or (3) the surrender by Declarant of the authority to appoint and remove officers and directors by an express amendment to this Declaration executed by Declarant. At the first election of directors of the Association following the expiration or termination of the Declarant's right to appoint directors hereunder, three (3) directors shall be elected on staggered terms of two (2) years. At the expiration of the term of office of each Board member, and at each annual meeting thereafter, a successor shall be elected to serve for a term of two (2) years. The Board members shall hold office until their respective successors shall have been elected by the Association.

Section 3. Removal of Members of the Board of Directors. At any regular or special meeting of the Association duly called, any one or more of the members of the Board of Directors may be removed with or without cause by a Majority of the members of the Association and a successor may then and there be elected to fill the vacancy thus created. Moreover, any director who has had three (3) consecutive unexcused absences from regularly scheduled Board meetings or is more than sixty (60) days past due in the payment of any assessment may be removed by the vote of a Majority of the other directors. Any director whose removal has been proposed shall be given at least ten (10) days notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting. For the purpose of this Section, no owner may vote more than his or her own vote and the vote of four (4) proxies; however, the Association or the board members may vote any number of proxies.

Section 4. Vacancies. Vacancies in the Board of Directors caused by any reason, except the removal of a director by vote of the membership, shall be filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. The successor so selected shall hold office for the remainder of the term of the director being replaced.

Section 5. Compensation. Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a Majority vote of the members. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board of Directors.

Section 6. Director Conflicts of Interest. Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided that the director's interest is disclosed to the Board and the contract

is approved by a Majority of the directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the director with whom the contract is made. The interested director shall not count for purposes of establishing a quorum of the Board. The interested director shall be entitled to be present at any meeting at which the proposed contract is discussed and to discuss the proposed contract, unless requested by any other director to leave the room during the discussion.

Section 7. Nomination. Nomination for election to the Board shall be made from the floor at the meeting.

Section 8. Elections. All members of the Association eligible to vote shall be entitled to cast their entire vote for each directorship to be filled. There shall be no cumulative voting. The directorships for which elections are held shall be filled by that number of candidates receiving the most votes. Voting for election of Board members shall be by secret written ballot (unless dispensed by unanimous consent at such meeting at which such voting is conducted).

B. Meetings.

Section 9. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by the Board, but such meetings shall be held at least once every three (3) months. The newly elected Board shall meet within ten (10) days after each annual meeting of the membership.

Section 10. Special Meetings. Special meetings of the Board of Directors may be called by the President on three (3) days' notice to each director given by mail, in person, by telephone, or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting. Special meetings of the Board of Directors shall be called by the President, Vice President, Secretary, or Treasurer in like manner and on like notice on the written request of at least two (2) directors.

Section 11. Waiver of Notice. Any director may, at any time, in writing, waive notice of any meeting of the Board of Directors, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board of Directors shall also constitute a waiver of notice by him or her of the time and place of such meeting. If all directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

Section 12. Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings. The presence of directors entitled to cast one-half of the votes of the Board shall constitute a quorum for the transaction of business. One or more directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other.

Section 13. Open Meetings. All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so authorized by the Board. Notwithstanding the above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 14. Action Without a Meeting. Any action by the Board of Directors required or permitted to be taken at any meeting may be taken without a meeting if a Majority of the directors consent in writing to such action. Such written consents must describe the action taken and be signed by no fewer than a Majority of the directors and such written consent or consents shall be filed with the minutes of the Board of Directors.

C. Powers and Duties.

Section 15. Powers and Duties. The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Property and may do all such acts and things as are not by the Declaration, the Articles of Incorporation, or these By-Laws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these By-Laws, the Board of Directors shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget, in which there shall be established the contribution of each owner to the Common Expenses;

(b) making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment (Unless otherwise determined by the Board of Directors, the annual assessment for each lot's proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month.);

(c) providing for the operation, care, upkeep, and maintenance of all of the Area of Common Responsibility as defined in Paragraph 14 of the Declaration;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Common Property, Association property, and the Area of Common Responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in O.C.G.A. § 14-3-302, and using the proceeds to administer the Association;

(f) making and amending rules and regulations and imposing sanctions for violation thereof, including reasonable monetary fines;

(g) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to, or alterations of the Common Property in accordance with the other provisions of the Declaration and these By-Laws, after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the costs of all services rendered to the Association or its members and not directly chargeable to specific owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred; and

(m) contracting with any person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts, condominium associations, or other associations or corporations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 16. Management Agent. The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board, to perform such duties and services as the Board of Directors shall authorize. The Board shall use reasonable efforts in any management contract to provide for termination of such contract with or without cause and without penalty, upon no more than thirty (30) days written notice, and for a term not in excess of one (1) year.

Section 17. Borrowing. The Board of Directors shall have the power to borrow money for the purpose of maintenance, repair, restoration or improvement of the Common Property and facilities without the approval of the members of the Association; the Board shall also be authorized to borrow money for other purposes; provided, however, the Board shall obtain membership approval by majority vote of a quorum present at a duly called meeting for voting on special assessments if the proposed borrowing is for the purpose of modifying, improving, or adding amenities to the Property and the total amount of such borrowing exceeds or would exceed ten thousand (\$10,000.00) dollars outstanding debt at any one time.

Section 18. Liability and Indemnification of Officers and Directors. The Association shall indemnify every officer and director against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such officer or director in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer or director, whether or not such person is an officer or director at the time such expenses are incurred. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer or director in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

#### D. Committees.

Section 19. Nominating Committee. Pursuant to Section 7 of this Article, there shall be a Nominating Committee composed of at least three (3) members appointed in the manner and to perform the functions specified in Section 7 of this Article.

Section 20. Architectural Control Committee. The Board may establish an Architectural Control Committee for the purpose of establishing and maintaining architectural standards in the Property as provided in the Declaration.

Section 21. Other Committees. There shall be such other committees as the Board shall determine with the powers and duties that the Board shall authorize.

Section 22. Service on Committees. Unless otherwise provided in these By-Laws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed with or without cause at any time and with or without a successor being named.

#### Article IV Officers

Section 1. Designation. The principal officers of the Association shall be the President, the Vice President, the Secretary, and the Treasurer. The President, Vice President, and Secretary shall be elected by and from the Board of Directors. The Treasurer shall be elected by the Board of Directors, but need not be a Board member. The Board of Directors may appoint one or more Assistant Treasurers, Assistant Secretaries, and such other subordinate officers as in its judgment may be necessary. Any assistant or subordinate officers shall not be required to be members of the Board of Directors. Except for the offices of Secretary and Treasurer, which may be held by the same person, no person may hold more than one (1) office.

Section 2. Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board following each annual meeting of the members and shall hold office at the pleasure of the Board of Directors and until a successor is elected.

Section 3. Removal of Officers. Upon the affirmative vote of a Majority of the members of the Board of Directors, any officer may be removed, either with or without cause, and a successor may be elected.

Section 4. Vacancies. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the power to appoint committees from among the members from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 6. Vice President. The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 7. Secretary. The Secretary shall keep the minutes of all meetings of the members and of the Board of Directors and shall have charge of such books and papers as the Board of Directors may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under Georgia law.

Section 8. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and

disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

Section 9. Other Officers. Other offices may be created by the Board, and the Board members which hold such offices shall have such titles and duties as are defined by the Board.

Section 10. Agreements, Contracts, Deeds, Leases, Etc. All agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

#### Article V Rule Making and Enforcement

Section 1. Authority and Enforcement. The Property shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of lots and the Common Property; provided, copies of all such rules and regulations shall be furnished to all owners and occupants. Any rule or regulation may be repealed by the affirmative vote or written consent of a Majority of the total Association vote at an annual or special meeting of the membership. Every owner and occupant shall comply with the Declaration, Bylaws and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved unit owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the owner's lot, and to suspend an owner's right to vote or to use the Common Property for violation of any duty imposed under the Declaration, these By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a lot. In the event that any occupant of a lot violates the Declaration, By-Laws, or a rule or regulation and a fine is imposed, notice of such violation shall be sent to the owner and the occupant, and the fine shall first be assessed against such occupant; provided, however, if the fine is not paid by the occupant within the time period set by the Board, the lot owner shall pay the fine upon notice from the Association, and the fine shall be an assessment and a lien against the lot until paid. The failure of the Board to enforce any provision of the Declaration, By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

Section 2. Fining and Suspension Procedure. The Board shall not impose a fine or suspend the right to vote or to use the Common Property (unless an owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association in which case such suspensions shall be automatic) unless and until notice of the violation is given as provided in subsection 2(a) below. Any such fine or fines may be effective or commence upon the sending of such notice or such later date as may be set forth in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge such fine under subsection 2(b) below.

(a) Notice. If any provision of the Declaration or By-Laws or any rule or regulation of the Association is violated, the Board shall serve the violator with written notice sent certified mail, return receipt requested, which

shall state: (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed; (iii) a statement that the violator may challenge the fact of the occurrence of a violation, the proposed sanction, or both, by written challenge and written request for a hearing before the Board, which request must be received by the Board within ten (10) days of the date of the notice; (iv) the name, address, and telephone number of a person to contact to challenge the proposed action. If a timely challenge is made and the violation is cured within ten (10) days of the date of the notice, the Board, in its discretion, may, but is not obligated to, waive any sanction or portion thereof. In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(b) Hearing. If the alleged violator timely challenges the proposed action, a hearing before the Board of Directors shall be held in executive session affording the violator a reasonable opportunity to be heard. The hearing shall be set at a reasonable time and date by the Board, and notice of the time, date (which shall be not less than ten (10) days from the giving of notice without the consent of the violator), and place of the hearing and an invitation to attend the hearing and produce any statements, evidence, and witnesses shall be sent to the alleged violator. Proof of such notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer or director who delivered such notice. The notice requirement shall be deemed satisfied if the violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. This Section shall be deemed complied with if a hearing is held and the violator attends and is provided an opportunity to be heard, notwithstanding the fact that the notice requirements contained herein are not technically followed.

Section 3. Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through its Board of Directors, may elect to enforce any provision of the Declaration, the By-Laws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity for compliance with the procedure set forth in Section (2) of this Article. In any such action, to the maximum extent permissible, the owner or occupant responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

The Association or its duly authorized agent shall have the power to enter a lot or upon any portion of the Common Property to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the By-Laws, or the rules and regulations. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating lot owner and shall be collected as provided herein for the collection of assessments.

#### Article VI Miscellaneous

Section 1. Notices. Unless otherwise provided in these By-Laws, all notices, demands, bills, statements, or other communications under these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) If to a lot owner, at the address which the lot owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the lot of such owner;

(b) If to an occupant, at the address of the lot occupied; or

(c) If to the Association, the Board of Directors or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary.

Section 2. Severability. The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these By-Laws or the Declaration.

Section 3. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision thereof.

Section 4. Gender and Grammar. The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 5. Fiscal Year. The fiscal year of the Association may be set by resolution of the Board of Directors. In the absence of such resolution by the Board of Directors, the fiscal year shall be the calendar year.

Section 6. Financial Review. A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board. However, after having received the Board's financial review at the annual meeting, the owners may, by a Majority of the Association vote, require that the accounts of the Association be audited as a common expense by an independent accountant.

Section 7. Conflicts. The duties and powers of the Association shall be those set forth in the Georgia Nonprofit Corporation Code, the Declaration, these By-Laws, and the Articles of Incorporation, together with those reasonably implied to affect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Georgia Nonprofit Corporation Code, the Declaration, these By-Laws, or the Articles of Incorporation, then the provisions of the Georgia Nonprofit Corporation Code, as may be applicable, the Declaration, the Articles of Incorporation and these By-Laws, in that order, shall prevail, and each owner of a lot, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

Section 8. Amendment. Except where a higher vote is required for action under a particular provision of the Declaration or By-Laws, in which case such higher vote shall be necessary to amend, these By-Laws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote of the Association. Notice of any meeting at which an amendment will be considered shall state that fact and the subject matter of the proposed amendment. No amendment shall become effective until it is certified by the President and Secretary of the Association and recorded in the Cobb County, Georgia land records. Any amendment duly certified and recorded (containing any additional signatures required by the Declaration) shall be conclusively presumed to have been duly adopted in accordance with the Declaration and By-Laws. Owners whose voting rights have been suspended pursuant to the Declaration or these By-Laws shall not be counted as eligible votes toward the amendment requirement.

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

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