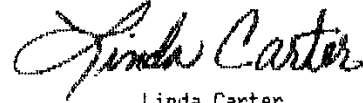


Deed Book 13384 Pg 9  
Filed and Recorded Jul-03-2002 09:30am  
2002-0096814



Linda Carter  
Clerk of Superior Court Dekalb Cty. Ga.  
I HEREBY CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT COPY OF THE ORIGINAL FILED IN MY OFFICE

**DECLARATION OF CONDOMINIUM**  
**FOR**  
**CLIFTON HEIGHTS, A CONDOMINIUM**

**Upon recording, please return to:**

**POWELL GOLDSTEIN FRAZER & MURPHY, LLP**  
**Sixteenth Floor**  
**191 Peachtree Street, N.E.**  
**Atlanta, Georgia 30303**  
**Attn: Diane Wiles, Paralegal**

**DECLARATION OF CONDOMINIUM**  
**FOR**  
**CLIFTON HEIGHTS, A CONDOMINIUM**

**THIS DECLARATION OF CONDOMINIUM** is made this 1<sup>st</sup> day of July, 2002, by SHARON MCSWAIN HOMES, INC., a Georgia corporation (the "Declarant").

**PART ONE: INTRODUCTION TO THE COMMUNITY**

*Sharon McSwain Homes, Inc., as developer of Clifton Heights, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance, and preservation of Clifton Heights as a condominium.*

**Article I      Creation of the Community**

1.1.    Purpose and Intent.

Declarant, as Owner of the real property located in Dekalb County, Georgia, and described in Exhibit "A," intends by Recording this Declaration to create a condominium community known as Clifton Heights and to provide for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising Clifton Heights. An integral part of the condominium is the creation of The Clifton Heights Condominium Association, Inc., an association comprised of all unit owners in Clifton Heights, to own, operate, and maintain various common elements and community improvements, and to administer and enforce this Declaration and the other Governing Documents referred to in this Declaration.

This document is intended to create a condominium within the meaning of the Georgia Condominium Act, O.C.G.A. Section 44-3-70, et. seq. The plat of survey for the condominium was prepared by Patterson & Dewer Engineers, dated June 3, 2002, and was Recorded in Condominium Plat Book 13384 Page 9. The floor plans for the condominium were prepared by Benchmark Design International, dated June 19, 2000, and were Recorded in Condominium File Cabinet No. 128, Pages 104 through 108.

Each unit shall have an equal undivided interest in the common elements.

1.2.    Binding Effect.

All property described in Exhibit "A" shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns.

### 1.3. Governing Documents.

The Governing Documents shall be enforceable by the Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, by any means available at law or in equity, subject to the provisions of Article XIII, if applicable, and the Georgia Condominium Act.

All provisions of the Governing Documents shall apply to all Owners and to all Occupants of their Units, as well as their respective tenants, guests, and invitees. Any lease on a Unit shall provide that the lessee and all Occupants of the leased Unit shall be bound by the terms of the Governing Documents.

All diagrams which are included in the Governing Documents are intended only to summarize the express written terms therein. **Diagrams are not intended to supplant or supplement the express written or implied terms contained in the Governing Documents.**

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

"Architectural Review Committee": The committee Declarant may create at such time as it shall determine in its sole discretion, and, thereafter, the committee appointed by the

Association, to review modification plans and administer and enforce the architectural controls, as more specifically provided in Section 4.2.

"Area of Common Responsibility": Collectively, the Common Elements, Limited Common Elements, and such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration or other applicable covenants, contracts, or agreements.

"Articles of Incorporation" or "Articles": The Articles of Incorporation of The Clifton Heights Condominium Association, Inc., as filed with the Georgia Secretary of State.

"Association": The Clifton Heights Condominium Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

"Base Assessment": Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units.

"Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Georgia corporate law.

"By-Laws": The By-Laws of The Clifton Heights Condominium Association, Inc.

"Common Elements": All real and personal property, including easements (including, without limitation, that certain Declaration of Party Wall and Easement dated even date herewith, by the Declarant) which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of Owners, all areas designated as a "common element" on the Condominium Plat and Condominium Plans, and all areas within the Properties which are not Units and to which no other Person holds record title. As applicable, the term also shall include Limited Common Elements, as defined below.

"Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

"Community-Wide Standard": The standard of conduct, maintenance, and appearance generally prevailing throughout Clifton Heights, or the minimum standards which the Declarant, the Board, and the Architectural Control Committee may establish for Clifton Heights as set forth in the Use Restrictions, Rules, Design Guidelines, Board resolutions, and by examples set forth by the Board and Declarant, whichever is a higher standard. Such standard may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as needs and demands change in response to, among other things, market factors and environmental concerns or pressures.

"Condominium": The condominium formed by this Declaration.



"Condominium Plans": The floor plans for Clifton Heights, A Condominium, Recorded in the Condominium File Cabinet of the Office of the Clerk of the Superior Court of Dekalb County, Georgia, in Condominium File Cabinet No. 128, Pages 104 through 108, together with any additional plans which may be Recorded after the date hereof pursuant to subparagraph 9.5(d) hereof..

"Condominium Plat": The plat of survey for Clifton Heights, A Condominium, Recorded in the Condominium Plat Book of the Office of the Clerk of the Superior Court of Dekalb County, Georgia, together with additional plat which may be Recorded after the date hereof pursuant to subparagraph 9.5(b) hereof.

"Declarant": Sharon McSwain Homes, Inc., a Georgia corporation, or any designated successor, successor-in-title, or assign.

"Declarant Control Period": The period of time during which Declarant is entitled to appoint all of the members of the Board of Directors as provided in the By-Laws.

"Design Guidelines": The architectural, design, and construction guidelines and application and review procedures applicable to the Properties as promulgated and administered pursuant to Article IV, as they may be amended.

"Clifton Heights": That certain condominium community located in Dekalb County, Georgia, which is comprised of the Properties and is more particularly described in the Condominium Plat and Condominium Plans.

"Georgia Condominium Act": The Georgia Condominium Act, O.C.G.A. Section 44-3-70, et. seq., as such act may be amended from time to time.

"Governing Documents": A collective term referring to this Declaration, the By-Laws, the Articles, the Design Guidelines, and any Use Restrictions and Rules adopted by the Board, as they may be amended.

"Limited Common Elements": A portion of the Common Elements reserved for the exclusive use of, and primarily benefitting one or more, but less than all, Units, as more particularly described in Article XII and as may be designated as a "limited common element" on the Condominium Plat and Condominium Plans. Limited Common Elements shall specifically include all window, doors and garage doors designed to serve a single Unit as well as any shutters, awnings, window boxes, doorsteps, mailboxes, and patios designed to serve a single Unit (but expressly excluding a Unit's rooftop terrace and any improvements situated thereon).

"Majority": Unless otherwise specifically defined in a provision of the Governing Documents, the term "majority" shall mean those votes, owners, or other groups as the content may indicate totaling more than 50% of the total eligible number.

"Member": A Person subject to membership in the Association pursuant to Section 6.2.

"Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. A "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

"Occupant", "Occupy", "Occupies", or "Occupancy": Unless otherwise specified in the Governing Documents, shall mean staying overnight in a particular Unit for at least 30 days in the subject calendar year. The term "Occupant" shall refer to the individual who Occupies a Unit.

"Owner": One or more Persons, which may include Declarant, who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

"Person": A natural person, a corporation, a partnership, a trustee, or any other legal entity.

"Properties" and "Property": The real property described in Exhibit "A", together with such portions of the Additional Property as may be added to the Condominium pursuant to Article IX hereof.

"Record", "Recording", or "Recorded": To file, filing, or filed of record in the official records of the Office of the Clerk of the Superior Court of Dekalb County, Georgia. The date of Recording shall refer to that time at which a document, map, plans or plat is Recorded.

"Rules": Regulations and guidelines relating to the use of the Area of Common Responsibility and conduct of persons on the Properties, as more specifically provided and authorized in Article III.

**"Special Assessment":** Assessments levied in accordance with Section 8.3.

"Specific Assessment": Assessments levied against a particular Unit or Units for expenses incurred or to be incurred by the Association for the purposes described in Sections 7.4 and 8.4.

**"Unit":** A contiguous portion of the Properties, and, if any portion of the Additional Property shall be added to the Condominium pursuant to Article IX hereof, the Additional Property other than Common Elements, Limited Common Elements, Area of Common Responsibility, and property dedicated to the public, which may be independently owned and conveyed and which is intended to be used and Occupied. The boundaries of each Unit are delineated on the Recorded Condominium Plans and are as follows: the side vertical boundary of each Unit shall be a line consistent with and along the centerline of all firewalls separating a Unit from another Unit. The front and rear vertical boundary of each Unit, and the side vertical boundary of each Unit which does not separate a Unit from another Unit, shall be the exterior surfaces of the walls of such Unit, and shall specifically include the interior finished surfaces of all perimeter walls, but shall specifically exclude all windows, doors and garage doors which shall be Limited Common Elements. The Units shall have no horizontal, upper and lower

**"Use Restrictions"**: Restrictions relating to an Owner's use of his or her Unit and conduct of Persons on the Properties, as more specifically authorized and provided for in Article III .

*The standards for use, conduct, maintenance, and architecture within Clifton Heights are what gives the community its identity and make it a place that people want to call "home." Yet those standards must be more than a static recitation of "thou shalt not's." This Declaration establishes procedures for rulemaking as a dynamic process which allows the community standards to evolve as the community grows and as technology evolves.*

### 3.1. Framework for Regulation.

### 3.2. Use Restriction and Rule Making Authority.

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adopted by the Association. Copies of the current Use Restrictions and Rules may be obtained from the Association.

3.4. Protection of Owners and Others.

No Use Restriction or Rule shall be adopted in violation of the following provisions, except as may be specifically set forth in this Declaration (either initially or by amendment) or in the initial Use Restrictions set forth below:

(a) Abridging Existing Rights. If any Use Restriction or Rule would otherwise require Owners to dispose of personal property which they maintained in or on the Unit prior to the effective date of such regulation, or to vacate a Unit in which they resided prior to the effective date of such regulation, and such property was maintained or such Occupancy was in compliance with this Declaration and all Use Restrictions and Rules previously in force, such Use Restriction or Rule shall not apply to any such Owners without their written consent.

(b) Activities Within Units. No Use Restriction or Rule shall interfere with the activities carried on within the confines of Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of Occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Unit, that create an unreasonable source of annoyance, or that otherwise violate local, state, or federal laws or regulations.

(c) Alienation. No Use Restriction or Rule shall place a blanket prohibition on conveying any Unit or require the Association's consent before conveying any Unit. However, the Association may (i) impose a reasonable fee on the conveyance of a Unit based upon the Association's related administrative costs; (ii) require that the Association be provided with advance notice of any conveyance; and, (iii) require such other payments or actions as may be provided for by this Declaration.

(d) Allocation of Burdens and Benefits. No Use Restriction or Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Elements to the detriment of any Owner over that Owner's objection expressed in writing to the Association and in violation of the Georgia Condominium Act. Nothing in this provision shall prevent the Association from adopting generally applicable rules for use of Common Elements, or from denying use privileges to those who abuse the Common Elements or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(e) Displays. The rights of Owners to display religious and holiday signs, symbols, and decorations inside Units of the kinds normally displayed in single-family dwellings shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the Unit.

No Use Restriction or Rule shall regulate the content of political signs; however, Use Restrictions and Rules may regulate the time, place and manner of posting such signs (including design criteria).

(f) Equal Treatment. Similarly situated Owners shall be treated similarly.

(g) Household Composition. No Use Restriction or Rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to limit the total number of Occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Elements.

(h) Reasonable Rights To Develop. No Use Restriction, Rule, or any other action by the Association or Board shall impede Declarant's right to develop the Properties in accordance with the rights reserved to the Declarant in this Declaration and the Governing Documents.

The limitations in subsections (a) through (g) of this Section 3.4 shall only limit rulemaking authority exercised under Section 3.2; they shall not apply to amendments to this Declaration adopted in accordance with Article XVII.

### 3.5. Initial Use Restrictions and Rules.

The Properties shall be used only for residential and related purposes. Related purposes may include, without limitation, business offices for Declarant or the Association consistent with this Declaration, or any commercial activity that directly advances the residential and recreational character of the Properties, provided that such commercial activity is authorized by the Declarant, Association, or Declaration.

(a) Animals and Pets. No animals of any kind, including livestock and poultry, shall be raised, bred, or kept on any portion of the Properties, except that for each Unit there shall be permitted up to a maximum of two (2) pets, the composition of which may include dogs, cats, birds, fish, or other pets as determined from time to time by the Board. Pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners or the Owner of any portion of the Properties shall be removed upon the Board's request. If the Owner fails to honor such request, the Board may cause the pet to be removed.

The Board may adopt reasonable regulations designed to minimize damage and disturbance to other Owners and Occupants, including Rules requiring damage deposits, waste removal, leash controls, and noise controls, pet occupancy limits based on size and facilities of the Unit and fair share use of the Common Elements; provided, however, any regulation prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept on the Properties in compliance with the Use Restrictions and Rules in effect prior to the adoption of such regulation. The Board may also adopt Rules which prohibit pets from certain Common Elements locations. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an

actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No pets shall be kept, bred, or maintained for any commercial purpose.

(b) Business Use. No business or trade, garage sale, moving sale, rummage sale, or similar activity shall be conducted in or from any Unit, except that an Owner or Occupant residing in a Unit may conduct business activities within the Unit so long as:

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

(ii) the business activity conforms to all zoning requirements for the Properties;

(iii) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and

(iv) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

"Business and trade" shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the family of the producer of such goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

This Section shall not apply to any activity conducted by Declarant or a Person approved by Declarant with respect to its development and sale of the Properties. Additionally, this Section shall not apply to any activity conducted by the Association or a Person approved by the Association for the purpose of operating, maintaining or advancing the residential character of the Properties.

The leasing of a Unit shall not be considered a business or trade within the meaning of this subsection.

(c) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained anywhere on the Premises.

(d) Firearms and Fireworks. The discharge of firearms or fireworks of any kind whatsoever within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

(e) Heating of Units in Winter Months. Whenever any temperature forecast for the Atlanta metropolitan area indicates that the temperature may drop below 40° Fahrenheit, each Owner shall maintain their Unit at a minimum room temperature of 55° Fahrenheit so as to minimize the risk of freezing and breaking water lines.

(f) Leasing of Units. For purposes of this Declaration, "leasing" or "lease" is defined as regular, exclusive Occupancy of a Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Units may be leased only in their entirety; no fraction or portion of a Unit may be leased. All leases shall be for a minimum lease term of not less than six (6) months. All leases shall be in writing, and each Owner shall deliver a copy of each Lease to the Board at least ten (10) days after its execution. The Board may require certain provisions to be included in any lease, including restrictions on subleasing and requirements to comply with the Governing Documents. The Owner must make available to the lessee copies of the Governing Documents. **The Owners may not amend this provision to prohibit leasing of Units unless and until such amendment is approved by the Declarant, and by the vote of Owners, other than Declarant, representing at least 75% of the total votes of the Association.**

(g) Nuisances. No Owner shall engage in any activity which materially disturbs or destroys the vegetation, wildlife, or air quality within the Properties or which result in unreasonable levels of sound or light pollution.

(h) Maximum Occupancy. Units shall not be Occupied by more than the following number of Persons, as applicable: maximum of 2 individuals for each bedroom depicted on a Unit's floor plan.

(i) Occupants Bound. All provisions of the Governing Documents shall apply to all Occupants, guests, and invitees of any Unit. Every Owner shall cause all Occupants of his or her Unit to comply with the foregoing and shall be responsible for all violations and losses to the Common Elements caused by such Occupants, notwithstanding the fact that such Occupants of a Unit are also fully liable and may be sanctioned for any violation.

(j) Prohibited Conditions. The following conditions, structures, or activities are prohibited within the Properties **unless prior approval in writing is otherwise obtained pursuant to Article IV:**

(i) The use of outdoor grills on balconies or patios; however, grills may be used on rooftop terraces in compliance with any applicable Association Rules;

(ii) Dog runs and animal pens of any kind on the exterior of any Unit or on the Common Elements;

(iii) Excessive exterior lighting on any Unit or Limited Common Element area. The Board (or its designee) in its sole discretion shall determine whether any exterior lighting is excessive; and



(iv) **Storage or placement of furniture, fixtures, appliances, machinery, bicycles, towels, equipment or other goods and chattels not in active use on the Common Elements, Limited Common Elements or any portion of a Unit which is visible from outside the Unit (including rooftop terraces).** Patio furniture and potted plants shall be permitted on rooftop terraces, however, such items may be subject to certain Design Guidelines and Rules. Detached storage buildings and detached sheds are prohibited.

(k) **Quiet Enjoyment.** Nothing shall be done or maintained on any part of a Unit which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the Occupants and invitees of other Units.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties, which in the Board's reasonable determination tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Elements or to the Occupants and invitees of other Units.

(l) **Signs.** No sign shall be erected within the Properties without the Board's written consent, except those required by law, including posters, circulars, and billboards. The Board may condition its consent by imposing time, place, and manner regulations with respect to such signs. This restriction shall not apply to entry and directional signs installed by Declarant. If permission is granted to any Person to erect a sign within the Properties, the Architectural Review Committee shall have the right to restrict the size, color, lettering, and placement of such sign. The Board and Declarant shall have the right to erect signs as they, in their discretion, deem appropriate. Home Owners may *not* erect "For Sale" and "For Rent" signs on their Unit or on Common Elements; provided, however, the Association may maintain a master sign or informational box for such purposes at the community's entrance and promulgate rules and regulations regarding the use of such amenities.

(m) **Subdivision of Unit and Time-Sharing.** No Unit shall be subdivided or its boundary lines changed except in accordance with the Georgia Condominium Act and with the Board's prior written approval. No Unit shall be made subject to any type of timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among members of the program on a fixed or floating time schedule over a period of years.

(n) **TV Antennas and Satellite Dishes.** Standard TV antennas and other over-the-air reception devices (including satellite dishes) of less than one (1) meter in diameter shall be permitted upon the Properties, and installed on each Unit's rooftop terrace only. Installation of such standard TV antennas and over-the-air reception devices shall comply with any and all Design Guidelines, or other applicable Rules and guidelines adopted by the Architectural Review Committee or the Board; provided, however, such Rules or regulations shall not unreasonably increase the cost of installing, maintaining, or using such devices if installed within an Owner's Unit. In no event may such a device be installed on the Properties without first notifying the Architectural Review Committee pursuant to Article IV and following the procedures set forth therein, as most installations will affect the Common Elements. Declarant or the Association

shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus (of any size) for a master antenna, cable, or other communication system for the benefit of all or a portion of Clifton Heights or the Properties, should any master system or systems be utilized by the Declarant or Association and require such exterior apparatus. Notwithstanding the above, two-way radio, HAM radio, or other hobby or professional radio or communication transmission equipment are prohibited.

(o) Trash Containers and Collection. No garbage or trash shall be placed or kept on the Properties, except in covered containers of a type, size and style which are approved by the Board or as required by the applicable governing jurisdiction, and subject to Rules promulgated by the Association. No outdoor incinerators shall be kept or maintained on the Properties.

(p) Unsightly or Unkempt Conditions. All portions of the Properties shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate upon the Properties so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Properties. No nuisance shall be permitted to exist or operate upon any Unit or the Properties so as to be offensive or detrimental to any other portion of the Properties. No activities shall be conducted upon the Properties (including within the Units) which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted on the Properties, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes or within a safe and well maintained interior fireplace.

(q) Vehicles and Parking. The term "vehicles," as used in this Section, shall include, without limitation, automobiles, trucks, boats, trailers, motorcycles, campers, vans, and recreational vehicles.

No vehicle may be left upon any portion of the Properties except upon a hard surfaced parking lot or within a Unit's garage. No person shall park any commercial vehicles, recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles, stored vehicles, and unlicensed vehicles or inoperable vehicles within the Properties. This Section shall not apply to emergency vehicle repairs or to commercial vehicles which are temporarily parked for the purpose of servicing Units or the Properties. The Association may promulgate rules regarding guest parking privileges on the Common Areas.

Except for vehicles which may exceed the dimensions of a Unit's garage space, all Owner and Occupant vehicles must be kept and stored when not in use within the Unit's garage space. If a Unit Owner or Occupant owns more than two (2) vehicles, the third vehicle and each additional vehicle of said Owner or Occupant may be stored on the Common Area made available by the Association for such use (including parking pads in front of a Unit's garage door). The Association may regulate the maximum number of vehicles which may be maintained and stored on the Common Area.



Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder.

(b) Architectural Review Committee. Upon Declarant's delegation or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the ARC, shall assume jurisdiction over all architectural matters. The ARC, when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the ARC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, whose compensation, if any, the Board shall establish from time to time.

(c) Fees; Assistance. For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer." The Reviewer may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

(a) Design Guidelines. Declarant may prepare (but is not obligated to do so) the initial Design Guidelines, which may contain general provisions applicable to all of the Properties. The Design Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Reviewer in considering applications. The Design

Guidelines are not the exclusive basis for decisions of the Reviewer, and compliance with the Design Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of the Properties, notwithstanding a delegation of reviewing authority to the ARC, unless Declarant also delegates the power to amend to the ARC. Upon termination or delegation of Declarant's right to amend, the ARC shall have the authority to amend the Design Guidelines with the Board's consent. Any amendments to the Design Guidelines shall be prospective only and shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no other limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners. In Declarant's sole discretion, such Design Guidelines may be Recorded, in which event the Recorded version, as it unilaterally may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Prior to commencing any Work within the scope of this Article, an Owner or the Association shall submit to the appropriate Reviewer an application for approval of the proposed Work in such form as the Design Guidelines or the Reviewer may specify. Such application shall include plans and specifications ("Plans") showing site layout, structural design, materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Guidelines and the Reviewer may require the submission of such additional information as it deems reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall, within 30 days after receipt of a completed application and all required information, respond in writing to the applicant at the address specified in the application. The response may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. The Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond within the 30-day period, approval shall be deemed to have been given, subject to Declarant's right to veto approval by the ARC pursuant to this Section. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted pursuant to Section 4.5. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of



considered a hardship warranting a variance. Notwithstanding the above, the Reviewer may not authorize variances without the written consent of Declarant, so long as Declarant owns any portion of the Properties.

4.6. Limitation of Liability.

The standards and procedures in this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Properties but shall not create any duty to any Person. Review and approval of any application are made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring (a) structural integrity or soundness of approved construction or modifications, (b) compliance with building codes and other governmental requirements; or (c) conformity of quality, value, size or design. Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for any claim whatsoever arising out of construction on or modifications to any Unit. In all matters, the Reviewer shall be defended and indemnified by the Association as provided in Section 7.6.

4.7. Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate and which may violate this Article or the Design Guidelines.

4.8. Enforcement.

Any construction, alteration, or other work done in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from Declarant, the Association, or Reviewer, Owners shall, at their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such non-conformance to the satisfaction of the requester or restore the property or Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, Declarant, the Association, or their designees shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the rate established by the Board (not to exceed the maximum rate then allowed by law), may be assessed against the benefited Unit and collected as a Specific Assessment unless otherwise prohibited in this Declaration or by the Georgia Condominium Act.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved Work and all Work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved Work by the deadline set forth in







## **Article VII Association Powers and Responsibilities**

### **7.1. Acceptance and Control of Association Property.**

(a) The Association, through action of its Board, and/or the Owners as tenants-in-common, may acquire, hold, and dispose of tangible and intangible personal property and real property.

(b) Declarant and its designees may convey to the Association or to the Owners as tenants-in-common, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, described in Exhibits "A" and "B". The Association shall accept and maintain such property at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association or to the Owners. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

### **7.2. Maintenance of Area of Common Responsibility.**

(a) Generally. The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

(i) all portions of and structures situated upon or comprising the Common Elements (including the Limited Common Elements);

(ii) landscaping within public rights-of-way within or abutting the Properties;

(iii) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Plat of any portion of the Properties, or any contract or agreement for maintenance thereof entered into by the Association;

(iv) all ponds, streams, and wetlands located within the Properties (if any) which serve as part of the stormwater drainage system for the Properties, including improvements and equipment installed therein or used in connection therewith;

(v) all walls or fences surrounding the Properties or which separate a Unit from the Common Elements, Limited Common Elements, or another Unit regardless of whether such wall or fence is located on the Common Elements, Limited Common Elements, or on a Unit.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

The Association also shall have the right and power, but not the obligation, to take such actions and adopt such rules as may be necessary for control, relocation, and management of wildlife, snakes, rodents, and pests within the Area of Common Responsibility.

The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

(b) Continuous Operation. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless the Declarant and Members representing 75% of the votes in the Association and Declarant, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of Declarant as long as Declarant owns any property described in Exhibit "A" or Exhibit "B" of this Declaration, and except as may be required by the Georgia Condominium Act.

(c) Maintenance as Common Expense. The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility and such other costs as provided in Section 7.2(a) shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other Recorded covenants, or agreements with the owner(s) thereof. Maintenance, repair, and replacement of Limited Common Elements shall be an expense assessed as a Specific Assessment to the Owner(s) to which such Limited Common Elements are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

### 7.3. Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for the Units and all insurable improvements and structures on the Properties and within the Area of Common Responsibility to the extent that the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the

Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes. The Association may exclude from such coverage (A) improvements to Units made by the Unit's Owners after the initial conveyance of the Unit by Declarant, and (b) improvements covered by a builder's risk insurance policy, but only during such period as the builder's risk insurance coverage remains in full force and effect and only if such coverage names the Association as an additional insured.

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. Such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,500,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association may obtain such additional coverages or limits;

(iii) Workers' compensation insurance and employers' liability insurance, if and to the extent required by law;

(iv) Directors' and officers' liability coverage (including coverage for committee members);

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-sixth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its business judgment, determines advisable.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses, except that premiums for insurance on Limited Common Elements may be included in the Specific Assessments of the Owner(s) to which such Limited Common Elements are assigned unless the Board reasonably determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the metropolitan Atlanta area. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible shall be treated as

a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the procedures set forth in Section 3.26 of the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Georgia which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Elements shall be for the benefit of the Association and the Owners;

(iii) not be brought into contribution with insurance purchased by Owners, Occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Elements or membership in the Association;

(vii) provide a waiver of subrogation under the policy against any Owner or household member of an Owner;

(viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners, unless such Owner is acting within the scope of its authority on behalf of the Association; and

(iix) include a provision vesting in the Board the exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.



- (b) suspending a Member's right to vote;
- (c) suspending any Person's right to use any recreational facilities within the Common Elements, if any; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;
- (d) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association; provided, however, no such suspension shall cause any hazardous or unsanitary condition to exist;
- (e) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;
- (f) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of Article IV and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;
- (g) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of Article IV and the Design Guidelines from continuing or performing any further activities in the Properties; and
- (h) levying Specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in Section 3.26 of the By-Laws:

- (i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking Rules);
- (ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.





(c) Exclusion from Liability for Other Tortious Acts.

The Association shall indemnify and forever hold each such director, officer, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

### 7.7. Security.

THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTIES DESIGNED TO MAKE THE PROPERTIES SAFER THAN THEY OTHERWISE MIGHT BE. THE ASSOCIATION, THE BOARD, THE ASSOCIATION'S MANAGEMENT COMPANY, AND DECLARANT SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTIES, NOR SHALL ANY OF THE ABOVE PARTIES BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE PROPERTIES, IF APPLICABLE, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED.

**EACH OWNER ACKNOWLEDGES, UNDERSTANDS, AND COVENANTS TO INFORM ITS TENANTS AND ALL OCCUPANTS OF ITS UNIT THAT THE ASSOCIATION, ITS BOARD, COMMITTEES, AND ALL OTHER PERSONS INVOLVED WITH THE GOVERNANCE, MAINTENANCE, AND MANAGEMENT OF THE PROPERTIES, AS WELL AS DECLARANT, ARE NOT INSURERS OF SAFETY OR SECURITY WITHIN THE PROPERTY. ALL OWNERS AND OCCUPANTS OF ANY UNIT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PERSONS, UNITS, AND THE CONTENTS OF UNITS, AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD AND COMMITTEES, THE MANAGEMENT COMPANY OF THE ASSOCIATION, AND DECLARANT HAVE MADE NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, RELATIVE TO ANY ENTRY GATE, PATROLLING OF THE PROPERTIES, ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, OR OTHER SECURITY SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE PROPERTIES.**

## 7.8. Provision of Services.

The Association shall be authorized, but not obligated, to enter into and terminate, in the Board's discretion, contracts or agreements with other entities, including Declarant, to provide services to and facilities for the Members of the Association, their guests, lessees, and invitees and to charge use and consumption fees for such services and facilities. For example, some services and facilities which might be offered include cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities.

7.9. Change of Services and Use of Common Elements.

The Board shall have the power and right to terminate provided services or to change the use of portions of the Common Elements with the consent of a majority of the Owners' votes, and the consent of Declarant (so long as Declarant owns any property described in Exhibit "A" or Exhibit "B"). Any such change shall be made by Board resolution stating that: (a) the present use or service is no longer in the best interest of the Owners, (b) the new use is for the benefit of the Owners, (c) the new use is consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Elements, and (d) the new use is consistent with the character of the community.

Notwithstanding the above, if the Board resolution states that the change will not have an adverse effect on the Association and the Owners, the Board may give notice of the change to all Owners. The notice shall give the Owners a right to object within 30 days of the notice. If less than 15% of the Members submit written objections, the change shall be deemed approved and a special meeting of the Members shall not be necessary to approve or disapprove the Board's action.

7.10. View Impairment.

**DECLARANT AND THE ASSOCIATION DO NOT GUARANTEE OR REPRESENT THAT ANY VIEW OVER AND ACROSS THE OPEN SPACE FROM UNITS WILL BE PRESERVED WITHOUT IMPAIRMENT. DECLARANT AND THE ASSOCIATION SHALL NOT HAVE THE OBLIGATION TO RELOCATE, PRUNE, OR THIN TREES OR OTHER LANDSCAPING EXCEPT AS SET FORTH IN ARTICLE V. THE OWNER OF THE OPEN SPACE SHALL HAVE THE RIGHT, IN ITS SOLE AND ABSOLUTE DISCRETION, TO ADD TREES AND OTHER LANDSCAPING TO THE OPEN SPACE FROM TIME TO TIME SUBJECT TO APPLICABLE LAW AND THE GOVERNING DOCUMENTS, IF APPLICABLE. ANY EXPRESS OR IMPLIED EASEMENTS FOR VIEW PURPOSES OR FOR THE PASSAGE OF LIGHT AND AIR ARE HEREBY EXPRESSLY DISCLAIMED.**

7.11. Relationship with Governmental and Tax-Exempt Organizations .

The Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Elements to state or local governments and non-profit, tax-exempt organizations for the benefit of the Properties, the Association, its Members, and residents. The Association may contribute money, property, or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("IRC"), such as, but not limited to entities which are exempt from federal income taxes under IRC Sections 501(c)(3) or 501(c)(4), as may be amended from time to time.

### 7.12. Recycling Programs.

The Board may establish a recycling program within the Properties, and in such event all Occupants of Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program or center is designed to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

## Article VIII Association Finances

### 8.1. Budgeting and Allocating Common Expenses.

Assessments for Common Expenses shall be levied at least annually in accordance with this Article.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to Section 8.2. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in Section 8.5.

The Association is hereby authorized to levy Base Assessments equally against all Units subject to assessment under Section 8.5 to fund the Common Expenses. Accordingly, the formula for calculating the Base Assessment against each Unit shall be the total budget amount for the coming year divided by the total number of Units in Clifton Heights.

Within 30 days of adopting the proposed budget, the Board shall send a copy of the annual budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of signed objection letters by Members representing at least 15% of the total votes of the Association; provided, however, all such objections must be submitted to the Board within 10 days of the date of the annual budget notice. In the event that a special meeting of the Members is held to consider the budget, the budget shall automatically become effective if approved at the meeting by Persons representing at least a majority of those present. The membership meeting to consider the annual budget, if any, shall occur not less than 7 nor more than 20 days from the petition date, and the Board may hold such meeting in conjunction with any other scheduled membership meeting. Except as otherwise provided herein, such meeting shall be governed by the relevant provisions of By-Laws Article II concerning special meetings of the Members.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

Any amounts accumulated from assessments for general Common Expenses in excess of the amount actually required for such Common Expenses and reserves for future Common Expenses shall be credited to each Unit assessed in proportion to the share of the assessments so assessed. Such credits shall be applied to the next annual Base Assessment against that Unit and thereafter until exhausted, unless the Board determines that calculation and application of such credit on a more frequent basis is preferable. The following diagram depicts the timing for submitting budgets and collecting assessments.

#### 8.2. Budgeting for Reserves.

The Board shall prepare and review at least annually a reserve budget for the Area of Common Responsibility. The budget 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 include in the Common Expense budget adopted pursuant to Section 8.1, a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period.

The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended. So long as Declarant owns any property described in Exhibit "A" or Exhibit "B", neither the Association nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent.

#### 8.3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members representing a majority of the total votes allocated to Units and the affirmative vote or written consent of Declarant, if such exists; provided, however, no such vote shall be required if the average assessment per Unit does not exceed \$200.00 per year (or such higher amount as may be permitted by the Georgia Condominium Act). Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Each Unit's share of the Special Assessments shall be determined and allocated in the same manner as Base Assessments under Section 8.1 above (i.e., based on a percentage interest in the Common Elements).





assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

8.7. Lien for Assessments.

Subject to the limitations of any applicable provision of Georgia law, the Association shall have an automatic lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges, and costs of collection (including attorneys' fees).

Such lien, when delinquent, may be enforced in the manner prescribed by Georgia law for the foreclosure of such liens.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first mortgage or security interest shall extinguish the lien as to any installments of such assessments due prior to the foreclosure. The subsequent Owner to the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.5, including such acquirer, its successors and assigns.

8.8. Transfer Fee Upon Sale of a Unit.

Upon acquisition of record title to a Unit by each subsequent Home Owner of such Unit, a contribution shall be made by the purchaser to the reserve account of the Association in the amount of \$200.00. This amount shall be in addition to, not in lieu of the annual Base Assessment per Unit for that fiscal year. This amount shall be deposited into the purchase and sale escrow and disbursed therefrom to the Association at closing, or in the event such disbursement is not so made, then this amount shall be paid to the Association by the purchaser within 30 days of closing. The foregoing transfer fee shall be deemed an assessment under this Article VIII and shall be subject to the lien and collection provisions set forth above. The transfer fee shall not apply to, and shall not be due from, Mortgagees who take record title to a Unit by foreclosure or by a deed in lieu of foreclosure.





plat or plats of survey of the portion of the Additional Property being thereby added to the Condominium, which plat or plats shall conform to the requirements of subsection (a) of Section 44-3-83 of the Act, (c) certifications, conforming to the certification requirements of subsection (b) of Section 44-3-83 of the Act, of plans previously filed with the Clerk of the Superior Court of DeKalb County, Georgia, which certifications shall specify which of the structures located on the portion of the Additional Property being thereby added to the Condominium they are given in respect to, and (d) plans conforming to the requirements of subsection (b) of Section 44-3-83 of the Act of every structure on the portion of the Additional Property being thereby added to the Condominium which contains or constitutes all or any part of a unit and in respect to which a certification is not given as provided in subparagraph (c) above. Each expansion of the Condominium will comply with all applicable requirements of Section 44-3-77 of the Act.

Each amendment which shall be filed with the Clerk of the Superior Court of DeKalb County, Georgia, pursuant to this Article 9 shall contain a legal description by metes and bounds of the portion of the Additional Property being thereby added to the Condominium.

9.6 Maximum Number of Units.

The maximum number of units that may be created on the Additional Property is twenty-two (22). In the event that the option herein reserved shall be exercised so as to add all of such maximum number of units to the Condominium, then the minimum undivided interest in the common elements which shall be allocated to any unit within the Condominium shall be one thirty-second (1/32nd). The maximum average number of units per acre that may be created on any portion of the Additional Property which shall be added to the Condominium by the exercise of the option herein reserved unto the Declarant is twenty-six (26).

9.7 Compatibility of Structures.

There are no assurances in regard to the extent to which any structures erected on any portion of the Additional Property will be compatible with the units on the Property in terms of quality of construction, the principal materials to be used and architectural style. There shall be no limitations on, or assurances in regard to, the extent to which any such recreational or other facilities shall be compatible with the structures located on the Phase I Property in terms of quality of construction, the principal materials to be used, and architectural style.

9.8 Improvements.

There are no assurances in regard to any limitations on the improvement that may be made on the Additional Property. There are no assurances in regard to whether any units created on any portion of the Additional Property will be substantially identical to the units located on the Property.

9.9 No Obligation.

Notwithstanding anything contained elsewhere in this Declaration which may be construed to the contrary, the Declarant shall be under no obligation to exercise the option herein

reserved unto it so as to add all or any portion of the Additional Property to the Condominium. Prior to being added to the Condominium pursuant to the exercise of the option herein reserved unto the Declarant, no portion of the Additional Property is subject to any of the terms, provision and restrictions of this Declaration, and all portions of the Additional property may be conveyed, pledged leased and encumbered totally free of the terms, provisions and restrictions of this Declaration.

## Article X Additional Rights Reserved to Declarant

### 10.1. Withdrawal of Property.

For the purpose of correcting clerical errors and engineering mistakes only, Declarant reserves the right to amend this Declaration, so long as it owns any property described in Exhibit "A" or Exhibit "B".

## 10.2. Marketing and Sales Activities .

Declarant may construct and maintain upon portions of the Common Elements such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model Units, and sales offices. Declarant shall have easements for access to and use of such facilities.

### 10.3. Right to Develop.

Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Elements for the purpose of making, constructing, and installing such improvements to the Common Elements as it deems appropriate in its sole discretion.

#### 10.4. Right to Approve Additional Covenants.

No Person shall Record any declaration of covenants, conditions, and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted Recording without such consent shall result in such instrument being void and of no force and effect.

#### 10.5. Right to Approve Changes in Community Standards.

No amendment to or modification of any Use Restrictions or Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration or described on Exhibit "B".

10.6. Right to Appoint and Remove Directors During Declarant Control Period.

During the Declarant Control Period, Declarant may appoint and remove any director or officer of the Association as provided in Articles III and IV of the By-Laws.

10.7. Right to Transfer or Assign Declarant Rights.

Any or all of the special rights and obligations of Declarant set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws.

10.8. Easement to Inspect and Right to Correct.

(a) Easement. Declarant reserves for itself and such other Persons as it may designate perpetual, non-exclusive easements throughout the Properties to the extent reasonably necessary for the purposes of access, inspecting, testing, redesigning, correcting, or improving any portion of the Properties, including Units and the Area of Common Responsibility. Declarant shall have the right to redesign, correct, or improve any part of the Properties, including Units and the Area of Common Responsibility.

(b) Right of Entry. In addition to the above easement, Declarant reserves a right of entry onto a Unit upon reasonable notice to the Owner except in an emergency. Entry into a Unit shall be only after Declarant notifies the Home Owner (or Occupant) and agrees with the Home Owner regarding a reasonable time to enter the Unit to perform such activities. Home Owner agrees to cooperate in a reasonable manner with Declarant in Declarant's exercise of the rights provided to it by this Section.

Entry onto the Area of Common Responsibility and into any improvements and structures thereon may be made by Declarant at any time, provided advance notice is given to the Association, except in an emergency.

(c) Damage. Any damage to a Unit or the Area of Common Responsibility resulting from the exercise of the easement and right of entry described in subsections (a) and (b) of this Section shall promptly be repaired by, and at the expense of, Declarant. The exercise of these easements shall not unreasonably interfere with the use of any Unit and entry onto any Unit shall be made only after reasonable notice to the Owner or Occupant.

10.9. Exclusive Rights to Use Name of Development.

No Person shall use the name "Clifton Heights" or any derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Clifton Heights" in printed or promotional matter where such term is used solely to specify that particular property is located within Clifton Heights, and the Association shall be entitled to use the words "Clifton Heights" in its name.

10.10. Sharon McSwain Homes, Inc. Marks.

Any use by the Association of names, marks or symbols of Sharon McSwain Homes, Inc. or any of its affiliates (collectively "Sharon McSwain Homes, Inc.") shall inure to the benefit of Sharon McSwain Homes, Inc. and shall be subject to Sharon McSwain Homes, Inc.'s periodic review for quality control. The Association shall enter into license agreements with Sharon McSwain Homes, Inc., terminable with or without cause and in a form specified by Sharon McSwain Homes, Inc. in its sole discretion, with respect to permissive use of certain Sharon McSwain Homes, Inc. marks (if any). The Association shall not use any Sharon McSwain Homes, Inc. mark without Sharon McSwain Homes, Inc.'s prior written consent.

10.11. Equal Treatment.

So long as Declarant owns any property described in Exhibit "A" or Exhibit "B", the Association shall not without the prior written consent of Declarant, adopt any policy, rule, or procedure that:

- (a) limits the access of Declarant, its successors, assigns, and affiliates or their personnel and/or guests, including visitors, to the Area of Common Responsibility or to any property owned by any of them;
- (b) limits or prevents Declarant, its successors, assigns, and affiliates or their personnel from advertising, marketing, or using the Association or its Common Elements or any property owned by any of them in promotional materials;
- (c) limits or prevents purchasers of new Units from becoming members of the Association or enjoying full use of its Common Elements, subject to the membership provisions of this Declaration and the By-Laws;
- (d) discriminates against or singles out any group of Members or prospective Members or Declarant;
- (e) impacts the ability of Declarant, its successors, assigns, and affiliates, to carry out to completion its development plans and related construction activities for Clifton Heights, as such plans are expressed on the Condominium Plat and Condominium Plans, as such may be amended and updated from time to time. Policies, rules, or procedures affecting the provisions of existing easements established by Declarant and limiting the establishment by Declarant of easements necessary to complete Clifton Heights shall be expressly included in this provision. Easements that may be established by Declarant shall include but shall not be limited to easements for development, construction and landscaping activities and utilities; or
- (f) impacts the ability of Declarant, its successors, assigns, and affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.



(iii) dedicate or transfer all or any part of the Common Elements, subject to such approval requirements as may be set forth in this Declaration and as may be required by the Georgia Condominium Act;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Elements;

(v) permit use of any recreational facilities situated on the Common Elements by persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board;

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Sections 14.5 and 18.4 and as may be required by the Georgia Condominium Act;

(vii) limit the use of those portions of the Common Elements designated "Limited Common Elements," as described in Article XII to the exclusive use of certain Owners;

(viii) create, enter into agreements with, and grant easements to tax-exempt organizations under Section 7.11;

(d) the right of the Association to rent or lease any portion of any clubhouse or other recreational facilities within the Common Elements, if any, on a short-term basis to any Person approved by the Association for the exclusive use of such person and such Person's family and guests; and

(e) the right of the Association to require Members, Owners, and/or their guests to present activity or use privilege cards, as may be issued by the Association, for access and use of recreational facilities within the Properties, if any.

### 11.2. Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Elements and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.





Declarant grants to the Association an easement and the right to enter a Unit to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Specific Assessment.

## **Article XII Limited Common Elements**

### **12.1. Purpose.**

Certain portions of the Common Elements may be designated on the Condominium Plat, the Condominium Plans, in this Declaration, or other means of designation as may be permitted under the Georgia Condominium Act, as Limited Common Elements and reserved for the exclusive use or primary benefit of certain Owners and Occupants of certain Units. All costs associated with maintenance, repair, replacement, and insurance of the Limited Common Elements shall be assessed as a Specific Assessment allocated among the Owners to which the Limited Common Elements are assigned.

### **12.2. Designation.**

Initially, any Limited Common Elements shall be designated on any conveyance deed or on the Condominium Plat, Condominium Plans, or in this Declaration.

Thereafter, a portion of the Common Elements may be assigned as Limited Common Elements and Limited Common Elements may be reassigned upon approval of the Board and the vote of Members representing a majority of the total votes in the Association, including a majority of the votes of the Unit Owners affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration or any Additional Property, any such assignment or reassignment shall also require Declarant's written consent. Any assignment or reassignment of Limited Common Elements shall be made in accordance with the requirements of the Georgia Condominium Act.

## **PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

The growth and success of Clifton Heights as a community in which people enjoy living requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and with our neighbors, and protection of the rights of others who have an interest in Clifton Heights.

## **Article XIII Dispute Resolution and Limitation on Litigation**

### **13.1 Prerequisites to Actions Against Declarant.**

Prior to filing a civil action, undertaking any action in accordance with Section 13.4, or retaining an expert for such actions against Declarant, or any builder or sub-contractor of any portion of Clifton Heights or the Properties, the Board shall notify and meet with the Members to discuss the alleged problem or deficiency. Moreover, prior to taking any action, the Board shall

notify the potential adverse party of the alleged problem or deficiency and provide such party a reasonable opportunity to inspect and repair the problem.

13.2. Consensus for Association Litigation.

Except as provided in this Section, the Association shall not commence a judicial or administrative proceeding without first providing written notice of such proposed action to each Member and obtaining the approval of at least 75% of the Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (b) the collection of assessments; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

13.3. Alternative Method for Resolving Disputes.

Declarant, the Association, their officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances, or disputes described in Sections 13.4 ("Claims") shall be resolved using the procedures set forth in Section 13.5 in lieu of filing suit in any court.

13.4. Claims.

Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application, or enforcement of the Governing Documents or the rights, obligations, and duties of any Bound Party under the Governing Documents shall be subject to the provisions of Section 13.5.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not constitute a Claim and shall not be subject to the provisions of Section 13.5:

(a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII;

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article III and Article IV;

(c) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents.



If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Within five days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent, and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Final and Binding Arbitration.

If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "C" or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons other than Claimant.

This subsection (c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Georgia. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Georgia.

13.6. Allocation of Costs of Resolving Claims.

Subject to Section 13.5(b), each Party shall bear its own costs, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

### 13.7. Enforcement of Resolution.

After resolution of any Claim, if any Party fails to abide by the terms of any agreement or Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 13.5. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

### 13.8. Attorneys' Fees.

In the event of an action instituted to enforce any of the provisions contained in the Governing Documents, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Specific Assessment with respect to the Unit(s) involved in the action.

## Article XIV Mortgagee Provisions

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

#### 14.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or Occupant which is not cured within 60 days;
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

14.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

14.3. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

14.4. Failure of Mortgagee to Respond .

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

14.5. HUD/VA Approval.

During the Declarant Control Period, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs, but only if either such agency is insuring or guaranteeing the Mortgage on any Unit: merger, consolidation, or dissolution of the Association; annexation of additional property; dedication, conveyance, or mortgaging of Common Elements; or material amendment of this Declaration. The granting of easements for utilities or other similar purposes consistent with the intended use of the Common Elements shall not be deemed a conveyance within the meaning of this Section.

14.6. Additional Mortgagee's Rights.

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

(i) by act or omission seek to abandon or terminate the condominium form of ownership at Clifton Heights;

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

(iii) partition or subdivide any Unit in any manner inconsistent with the provisions of this Declaration;

(iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (the granting of easements or licenses, as authorized herein, shall not be deemed a transfer within the meaning of this clause); or

(v) use hazard insurance proceeds for losses to any portion of the Properties (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such portion of the Properties.

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

(b) Where the Mortgagee holding a first Mortgage of record, a secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the secondary purchase money Mortgage is the seller of the Unit) or other purchaser of a Unit obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage or by deed in lieu of foreclosure, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all assessments accruing subsequent to the conveyance of title, including, but not limited to, all assessments due for the month in which title is conveyed.

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

## **PART SEVEN: CHANGES IN THE COMMUNITY**

Communities such as Clifton Heights are dynamic and constantly evolving as circumstances, technology, needs, desires, and laws change over time. Clifton Heights and its governing documents must be able to adapt to these changes while protecting the things that make Clifton Heights unique.

### **Article XV Changes in Ownership of Units**

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may

## Article XVI Changes in Common Elements and Eminent Domain

In the event of a taking by condemnation or by eminent domain, the provisions of the Georgia Condominium Act shall prevail and govern; provided, however, that any proceeds received from taking of the Common Elements (other than Limited Common Elements) by condemnation or eminent domain shall, at the option of the Board, either be allocated to the Owners pursuant to O.C.G.A. §44-3-97(a), as amended, or be deposited into the Association's operating account or reserve account to be applied to Common Expenses. Each holder of a first Mortgage shall be entitled to written notice of any such condemnation proceedings, and nothing in the Governing Documents shall be construed to give a priority to any Unit Owner in the distribution of proceeds to such Unit.

### 17.1. Corrective Amendments.


17.2. By Members.

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**SHARON MCSWAIN HOMES, INC.,**  
a Georgia corporation

By:   
Daniel Carter, Chief Financial Officer

Candice Lubas  
Witness

[AFFIX CORPORATE SEAL]

My Commission Expires: 4-19-02



ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 58 OF THE 18<sup>TH</sup> DISTRICT, DEKALB COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON PIN ON THE NORTHEASTERN RIGHT-OF-WAY OF CLIFTON ROAD (80' R/W), SAID PIN BEING LOCATED 21.72 FEET NORTHWEST OF THE POINT WHERE SAID NORTHEASTERN RIGHT-OF-WAY WOULD INTERSECT THE NORTHWESTERN RIGHT-OF-WAY OF HOUSTON MILL ROAD (R/W VARIES) IF SAID RIGHTS-OF-WAY WERE EXTENDED TO FORM AN INTERSECTION; THENCE PROCEED ALONG SAID NORTHEASTERN RIGHT-OF-WAY NORTH 34°30'51" WEST FOR 45.12 FEET TO A POINT; THENCE CONTINUE ALONG SAID NORTHEASTERN RIGHT-OF-WAY 14.78 FEET FOLLOWING THE ARC OF A CURVE TO THE LEFT (SAID ARC HAVING A RADIUS OF 612.98 FEET AND BEING SUBTENDED BY A CHORD LINE RUNNING NORTH 35°10'24" WEST FOR 14.78 FEET) TO A POINT; THENCE PROCEED NORTH 48°19'34" EAST FOR 302.03 FEET TO A POINT; THENCE PROCEED SOUTH 52°20'48" EAST FOR 83.26 FEET TO AN IRON PIN ON THE NORTHWESTERN RIGHT-OF-WAY OF HOUSTON MILL ROAD; THENCE PROCEED ALONG SAID NORTHWESTERN RIGHT-OF-WAY 158.50 FEET FOLLOWING THE ARC OF A CURVE TO THE RIGHT (SAID ARC HAVING A RADIUS OF 309.56 FEET AND BEING SUBTENDED BY A CHORD LINE RUNNING SOUTH 39°33'37" WEST FOR 156.78 FEET) TO A POINT; THENCE CONTINUE ALONG SAID NORTHWESTERN RIGHT-OF-WAY SOUTH 54°20'48" WEST FOR 70.19 FEET TO A POINT; THENCE CONTINUE ALONG SAID NORTHWESTERN RIGHT-OF-WAY NORTH 35°39'12" WEST FOR 3.13 FEET TO A POINT; THENCE CONTINUE ALONG SAID NORTHWESTERN RIGHT-OF-WAY SOUTH 56°11'35" WEST FOR 81.01 FEET TO A POINT; THENCE CONTINUE ALONG SAID NORTHWESTERN RIGHT-OF-WAY NORTH 80°47'14" WEST FOR 31.83 FEET TO A POINT AND THE POINT OF BEGINNING.

SAID TRACT CONTAINS 0.699 ACRES OF LAND, MORE OR LESS, ACCORDING TO A PLAT AND SURVEY BY PATTERSON & DEWAR ENGINEERS, INC., DATED SEPTEMBER 6, 2000.

LESS AND EXCEPT:

All that tract or parcel of land lying and being in Land Lot 58 of the 18<sup>th</sup> District, Dekalb County, Georgia and being more particularly described as follows:

To find the point of beginning, commence at a point located on the northeastern right-of-way of Clifton Road (80' R/W), said point being located 81.62 feet Northwest of the point where said Northeastern right-of-way would intersect the Northwestern right-of-way of Houston Mill Road (R/W varies) if said rights-of-way were extended to form an intersection; thence proceed along said Northwestern right-of-way 110.16 feet following the arc of a curve to the left (said arc being subtended by a chord line running north 41°00'45" West for 110.01 feet) to an iron pin; thence proceed North 48°19'34" east for 280.03 feet to an iron pin; thence proceed South 52°20'48" East for 111.94 feet to a point, which point is the Point of Beginning; THENCE proceed South 52°20'48" East a distance of 83.26 feet to a point located on the Northern margin of the right-of-way of Houston Mill Road (having a variable right-of-way); thence proceed along an arc to the right in the aforesaid right-of-way an arc distance of 98.50 feet to a point (said arc being subtended by a cord having a bearing of South 34° 00' 26" West and an arc distance of 98.09 feet); then North 42° 17 minutes 15 seconds West a distance of 106.09 feet to a point; THENCE proceed North 48°19'34" West to a distance of 80.75 feet to the Point of Beginning.

Said tract contains .198 acres of land, more or less, according to a plat and survey by Patterson & Dewar Engineers, Inc., dated February 22, 2002.

**EXHIBIT "B"**

ALL THAT TRACT OR PARCEL OF LAND LYING AND BEING IN LAND LOT 58 OF THE 18<sup>TH</sup> DISTRICT, DEKALB COUNTY, GEORGIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHEASTERN RIGHT-OF-WAY OF CLIFTON ROAD (80' R/W), SAID POINT BEING LOCATED 81.62 FEET NORTHWEST OF THE POINT WHERE SAID NORTHEASTERN RIGHT-OF-WAY WOULD INTERSECT THE NORTHWESTERN RIGHT-OF-WAY OF HOUSTON MILL ROAD (R/W VARIES) IF SAID RIGHTS-OF-WAY WERE EXTENDED TO FORM AN INTERSECTION; THENCE PROCEED ALONG SAID NORTHEASTERN RIGHT-OF-WAY 110.16 FEET FOLLOWING THE ARC OF A CURVE TO THE LEFT (SAID ARC BEING SUBTENDED BY A CHORD LINE RUNNING NORTH 41°00'45" WEST FOR 110.01 FEET) TO AN IRON PIN; THENCE PROCEED NORTH 48°19'34" EAST FOR 280.03 FEET TO AN IRON PIN; THENCE PROCEED SOUTH 52°20'48" EAST FOR 111.94 FEET TO A POINT; THENCE PROCEED SOUTH 48°19'34" WEST FOR 302.03 FEET TO A POINT AND THE POINT OF BEGINNING.

SAID TRACT CONTAINS 0.731 ACRES OF LAND, MORE OR LESS, ACCORDING TO A PLAT AND SURVEY BY PATTERSON & DEWAR ENGINEERS, INC., DATED SEPTEMBER 6, 2000.

Together with the following tract:

All that tract or parcel of land lying and being in Land Lot 58 of the 18<sup>th</sup> District, Dekalb County, Georgia and being more particularly described as follows:

To find the point of beginning, commence at a point located on the northeastern right-of-way of Clifton Road (80' R/W), said point being located 81.62 feet Northwest of the point where said Northeastern right-of-way would intersect the Northwestern right-of-way of Houston Mill Road (R/W varies) if said rights-of-way were extended to form an intersection; thence proceed along said Northwestern right-of-way 110.16 feet following the arc of a curve to the left (said arc being subtended by a chord line running north 41°00'45" West for 110.01 feet) to an iron pin; thence proceed North 48°19'34" east for 280.03 feet to an iron pin; thence proceed South 52°20'48" East for 111.94 feet to a point, which point is the Point of Beginning; THENCE proceed South 52°20'48" East a distance of 83.26 feet to a point located on the Northern margin of the right-of-way of Houston Mill Road (having a variable right-of-way); thence proceed along an arc to the right in the aforesaid right-of-way an arc distance of 98.50 feet to a point (said arc being subtended by a cord having a bearing of South 34° 00' 26" West and an arc distance of 98.09 feet); then North 42° 17 minutes 15 seconds West a distance of 106.09 feet to a point; THENCE proceed North 48°19'34" West to a distance of 80.75 feet to the Point of Beginning.

Said tract contains .198 acres of land, more or less, according to a plat and survey by Patterson & Dewar Engineers, Inc., dated February 22, 2002.



