

# **1350 North Morningside Condominium Association, Inc.**

1350 North Morningside Drive NE

Atlanta, Georgia 30306



## **CONSOLIDATED DECLARATION OF CONDOMINIUM WITH IN-TEXT AMENDMENTS**

1350 NORTH MORNINGSIDE CONDOMINIUM  
CONSOLIDATED DECLARATION OF CONDOMINIUM

Updated: February, 2024

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CONSOLIDATED DECLARATION OF CONDOMINIUM FOR  
1350 NORTH MORNINGSIDE CONDOMINIUM  
FULTON COUNTY, GEORGIA

THIS DECLARATION OF CONDOMINIUM (hereinafter referred to as the "Declaration") made the 26th day of September, 2000 by KPR, LLC, a Georgia limited liability company (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant desires to submit certain real property and improvements constructed thereon located in Fulton County, Georgia (which real property is more fully described on Exhibit "A", attached hereto and made a part hereof) to the provisions of the Georgia Condominium Act, Official Code of Ga. Ann. Chapter 44, Article 3, Section 70 et seq. (hereinafter referred to as the "Act"), and to the provisions of this Declaration;

NOW, THEREFORE, Declarant hereby declares that the real property described on Exhibit "A", together with the improvements constructed thereon, are hereby submitted to the Act and made subject to this Declaration. The terms and provisions of this Declaration shall constitute covenants running with the land.

[Note: for purposes of this consolidated presentation of the association's Declaration, two amendments are included and incorporated within the following text where indicated and as described by each amendment. The first amendment is dated January 14, 2005 and is recorded in the Fulton County, Georgia, Deed Book 39206, pages 610-616. The second amendment is dated October 11, 2023 and recorded in Fulton County, Georgia Deed Book 67260, pages 471-473. Should any errors, omissions, or conflicts arise between this consolidated presentation of Declaration, the original, and its amendments, those as filed with the county shall govern. -Ed.]

ARTICLE I – DEFINITIONS

1.01 General. As used herein, the terms defined in Section 44-3-71 of the Act shall be deemed to have the same meanings as set forth therein, unless the context shall otherwise require or unless otherwise specified.

1.02 Articles. "Articles" shall mean the Articles of Incorporation of the Association as amended from time to time.

1.03 Association. "Association" shall mean 1350 North Morningside Condominium Association, Inc., a Georgia nonprofit corporation, its successors, and assigns.

1.04 By-Laws. “By-Laws” shall mean the By-Laws of the Association as amended from time to time.

1.05 Condominium. “Condominium” shall mean the Property known as 1350 North Morningside Condominium.

1.06 Declarant. “Declarant” shall mean KPR, LLC, a Georgia limited liability company or any successor-in-title who comes to stand in the same relation to the Condominium as Declarant, including, without limitation, any party that acquires ownership of all of Declarant’s then remaining interests in the Condominium.

1.07 Declaration. “Declaration” shall mean this Declaration of Condominium for 1350 North Morningside Condominium, as amended from time to time.

1.08 Director. “Director” shall mean a member of the Board of Directors of the Association.

1.09 First Mortgagee. “First Mortgagee” shall mean the holder of a first-in-priority mortgage, deed to secure debt or other instrument conveying a first-in-priority lien upon or security title to any Unit and any insurer or guarantor of any such instrument.

1.10 Lender. “Lender” shall mean the holder of any mortgage, deed to secure debt or other instrument conveying a lien upon or security title to any Unit (including a First Mortgagee), and any insurer or guarantor of any such instrument.

1.11 Plans. “Plans” shall mean those certain plans, prepared by Scott D. Newton and John A. Eisenlaw, certified by John Andrew Eisenlaw, and filed for record with the Clerk of the Superior Court of Fulton County, Georgia, as indicated on the cover page hereof, and as revised or amended from time to time, and such other plans filed in connection with this Declaration.

1.12 Plat. “Plat” shall mean that certain Survey for 1350 North Morningside Condominiums, prepared by Joseph C. King, doing business as Dekalb Surveys, under seal and certification of Joseph C. King, filed for record with the Clerk of the Superior Court of Fulton County, Georgia, as indicated on the cover page hereof, as revised or amended from time to time, and such other plats recorded in connection with making property subject to the Declaration.

1.13 Property. “Property” shall mean the property described on Exhibit “A” together with all improvements located thereon and such other property made subject to the Declaration.

1.14 Unit. “Unit” shall mean a portion of the Condominium depicted on the Plat and the Plans and having the boundaries described in Exhibit “B” attached hereto and incorporated herein by reference and intended for residential use.

1.15 Unit Owner or Owner. “Unit Owner” or “Owner” shall mean one or

more persons, including Declarant, who owns fee simple title to any Unit.

## ARTICLE II – THE CONDOMINIUM

2.01 Name. The name of the Condominium shall be 1350 North Morningside Condominium.

2.02 Units, Equal Share in Common Elements, Vote. Appurtenant to each Unit shall be an undivided interest in the Common Elements. Each Unit, together with such undivided interest in the Common Elements, shall constitute a separate parcel of real property, which may be owned, held, transferred, sold, conveyed, used, occupied, mortgaged, or otherwise encumbered, in fee simple in the same manner as any other separate parcel of real property, subject, however, to the Act and this Declaration. The undivided interest in the Common Elements appurtenant to each Unit shall not be separated from such Unit and shall be deemed to be transferred, conveyed, and encumbered with the Unit even if such interest is not stated or referred to in the document or instrument effecting such transfer, conveyance or encumbrance. An equal share of the Common Elements

2.03 Common Elements. The Common Elements consist of all portions of the Condominium that are not Units.

2.04 Limited Common Elements. Those portions of the Common Elements which are assigned to the exclusive use of a certain Unit or Units, as hereinafter set forth, are Limited Common Elements. Each Unit is assigned as Limited Common Elements the entry ways immediately in front of the Unit, and appurtenant fixtures and facilities which provide direct access to the Unit. In the event that any of the items described herein or other Common Elements serve more than one but less than all Units, such items shall be Limited Common Elements appurtenant to the Units served thereby. Reassignment of Limited Common Elements may be accomplished pursuant to Section 44-3-82 of the Act. Assignment of Common Elements not previously assigned as Limited Common Elements may be accomplished upon the approval of the majority of the Board of Directors in accordance with procedures set forth in Section 44-3-82 of the Act.

2.05 Alterations. Alterations within Units may only be made subject to the provisions of Section 44-3-90(a) of the Act.

2.06 Partition. Unless the condominium form of ownership hereby established is terminated as provided herein, no Unit Owner or other person shall bring any action for partition of the whole or any part of any Unit or the whole or any part of the Common Elements.

2.07 Maintenance and Repair of Condominium.

(a) Association Responsibility. The Association shall maintain, repair, and



replace all improvements constituting a part of the Common Elements, including the Limited Common Elements, and including but not limited to utility facilities serving more than one Unit, utility lines in the Common Elements, lawns, shrubs, trees, walkways, drives, parking areas, and the structural portions and exterior portions of the building and improvements which are a part of the Common Elements, including the Limited Common Elements, and that do not constitute part of a Unit, provided that the Association will not be responsible for the cleaning and housekeeping of Limited Common Elements or components thereof. The Association shall maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements which are a part of the Common Elements, including the Limited Common Elements. The Association will not have responsibility to repair or maintain any Unit, or component thereof, or personal property within a Unit except to repair damages caused thereto while performing such maintenance, repairs and replacements as provided above.

- (b) Unit Owner Responsibility. Each Owner shall repair and maintain the Unit or Units, and all components thereof, owned by that Owner, and perform cleaning and housekeeping with respect to the Limited Common Elements appurtenant to that Owner's Unit. Without limiting the generality of the foregoing, this repair and maintenance responsibility of an Owner includes repair, maintenance and replacement of all windows, screens and doors, including the frames, sashes and jams, and the hardware therefor. If an Owner fails to make a repair or perform maintenance required of that Owner, or if the need for maintenance or repair of any part of the Common Elements or Limited Common Elements is caused by the negligent or intentional act of any Owner or any occupant, or is as a result of the failure of any Owner or his or its predecessors in the title to timely pursue to conclusion a claim under any warranty, express, implied, or imposed by law, then the Association may perform the same, and if the cost of such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, the cost thereof will constitute a special assessment, as hereinafter defined, on the Unit owned by that Owner and on that Owner. The determination that such maintenance or repair is necessary, or has been so caused, will be made by the Board of Directors.
- (c) Failure to Maintain. If the Board of Directors determines that any Owner has failed or refused to discharge properly his or her obligation with regard to the maintenance, repair, or replacement of items of which he or she is responsible hereunder, then, the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors.

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

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

2.08 Ingress and Egress of Unit Owners. Each Unit Owner has an unrestricted right of ingress and egress to his Unit, which right shall be appurtenant to the Unit and shall be in effect for as long as the Unit is subject to the Act and this Declaration.

### ARTICLE III – THE CONDOMINIUM ASSOCIATION

3.01 General. “The Association” is a non-profit membership corporation. The business and affairs of the Association shall be governed by the Directors of the Association. The Association, the Directors and the officers of the Association shall have all of the duties and powers set forth in the Declaration, the Articles, the By-Laws, the Act, the Georgia Nonprofit Corporation Code and such other duties and powers reasonably implied to carry out the provisions of this Declaration and the purposes of the Association.

3.02 Declarant Control. Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events occur:

- (a) The date as of which eighty (80%) percent of the Units have been conveyed by Declarant to Unit Owners other than a person or persons constituting the Declarant; or
- (b) The date which is four months after the conveyance by Declarant of 75% of the Units to Unit Owners other than a person or persons constituting

Declarant; or

- (c) The expiration of three (3) years after the recording of this Declaration;  
or
- (d) The surrender by Declarant of the authority to appoint and remove members of the Board of Directors and Officers of the Association by an amendment to this Declaration executed and recorded by Declarant.

3.03 Control by Unit Owners. Pursuant to the provisions of Section 44-3-101 of the Act, the right to appoint or remove directors and officers of the Association shall automatically pass to the Unit Owners, including Declarant if Declarant owns a Unit, upon the expiration of such right.

3.04 Agreements. In addition to the provision of Subsection 44-3-101(c) of the Act, any agreement for professional management of the Condominium may not exceed three years (provided any agreement for management of the condominium negotiated by Declarant may not exceed one year). Any such agreement must provide for termination for cause upon thirty (30) days notice and termination by either party without cause and without payment of a termination fee upon ninety (90) days written notice. In addition to the foregoing, (a) any employment contract or lease of recreational or parking areas or facilities, or (b) any contract or lease, between Declarant and the Association must provide for termination by the Association without penalty at any time after Declarant has transferred control of the Association.

3.05 Rules and Regulations. Reasonable regulations and rules concerning use or Units and appurtenances thereto and the Common Elements may be made and amended from time to time by the Board of Directors subject to the consent of Declarant while Declarant owns any Unit primarily for the purpose of sale, which consent may be withheld in Declarant's sole and unfettered discretion; provided, however, that copies of such regulations and amendments thereto shall be furnished by the Association to all Owners. Failure to abide by such regulations, rules or requirements shall be grounds for an action or suit by the Association, and any aggrieved Owner to recover damages, or equitable relief, or both. In addition, the Association is empowered to impose and assess fines and has the right to suspend temporarily the use of certain Common Elements (but not the right of ingress and egress to a Unit) in accordance with the provisions of Article IX of the By-Laws. Notwithstanding the foregoing to the contrary, in no event shall the Association impose any fine upon Declarant or suspend the right of Declarant or its duly authorized agents, representatives, or employees to use any Common Elements while Declarant owns one or more Units primarily for the purpose of sale.

3.06 Compensation of Directors and Officers. No Director or Officer of the Association shall receive any fee or compensation for services performed by him as such Director or Officer.

3.07 Application of Votes in the Association. Each Unit Owner shall automatically be a member of the Association and shall remain a member for the period of ownership. Membership shall be appurtenant to and may not be separated from

ownership of any Unit. Each Unit is allocated one vote in the Association. All votes in the Association shall be cast under such rules and procedures as adopted by the Board of Directors, or by Georgia law.

#### ARTICLE IV – MAINTENANCE ASSESSMENTS

4.01 Lien for Assessments. Each Unit Owner shall pay to the Association assessments for common expenses. The assessments shall be established and collected from time to time as hereinafter provided. The assessments, together with interest, costs, late charges and reasonable attorney's fees for collection, shall be a charge on the Unit in favor of the Association and shall be a continuing lien upon the Unit upon which such assessment is made and shall be the personal obligation of the person who was the owner of the Unit at the time the assessment was due.

4.02 Effect of Transfer of Unit. The sale or transfer of any Unit shall not affect the lien set forth above, and any grantee shall not be personally liable for the portion of any assessment or charge assessed against such Unit prior to the time of conveyance. Any Unit Owner, Lender, person having executed a contract for the purchase of a Unit, or lender considering the loan of funds to be secured by a Unit shall be entitled to a statement from the Association or its management agent setting forth the amount of assessments past due and unpaid together with late charges and interest applicable thereto against that Unit. Such request shall be in writing, shall be delivered to the registered office of the Association, and shall state an address to which the statement is to be directed. Failure on the part of the Association to mail or otherwise furnish such statement regarding amounts due and payable at the expiration of such five-day period with respect to the Unit involved to such address as may be specified in the written request therefor within five business days from the receipt of such request shall cause the lien for assessments created by the Act to be extinguished and of no further force or effect as to the title or interest acquired by the purchaser or lender, if any, as the case may be, and their respective successors and assigns, in the transaction contemplated in connection with such request. The information specified in such statement shall be binding upon the Association and upon every Unit Owner.

4.03 Purpose of Assessments. The assessments levied pursuant to this Declaration shall be used exclusively to promote the recreation, health, safety and welfare of the residents and Unit Owners of the Condominium and for the improvement, upkeep, and maintenance of the Condominium as provided for herein.

4.04 Common Expenses. Each Unit Owner shall be liable for and shall pay its pro rata share of the common expenses as set forth in Exhibit "C", attached hereto and incorporated herein by reference. The common expenses of the Association shall be all of the expenditures which are made or incurred by or on behalf of the Association in connection with the exercise or their respective powers and responsibilities, and shall include, but shall not be limited to, the following:

- (a) Management fees and expenses of administration, including legal and

accounting fees;

(b) Charges for utilities serving the Common Elements and charges for other common services;

(c) The cost of any master, blanket or other insurance policies purchased for the benefit of all Unit Owners and the Association as permitted or required by this Declaration; the expense of maintenance, operation and repair of the Condominium which is the responsibility of the Association under the provisions hereof;

(d) Charges for utilities or other common services provided to the Units and not separately metered;

(e) Such other expenses as may be determined from time to time by the Board of Directors to be common expenses, including, without limitation, taxes and governmental charges such as sanitary taxes not separately assessed against each Unit;

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

(g) The costs of any capital improvement to be made upon the Common Elements, provided that such capital improvements (other than the repairing, rebuilding or reconstructing of any portion of the Common Elements damaged or destroyed by casualty) have been approved by (i) a vote of more than two-thirds (2/3) of the Unit Owners entitled to vote present in person or by proxy at a meeting of the members of the Association at which a quorum was present and with respect to which notice was given that consideration of such capital improvement was a purpose of such meeting, and (ii) by Declarant while Declarant owns any Unit primarily for the purpose of sale.

4.05 Assessments for Common Expenses. The Board of Directors of the Association shall determine for each year, (on a calendar year basis), prior to January 1 of that year the estimated aggregate amount of the common expenses for such year. Except for the first year after Declarant relinquishes control of the Association, a monthly assessment fee increases in excess of a percentage equal to the annual rate of inflation as measured by the Consumer Price Index for all Urban Consumers for the immediately preceding 12-month period may be disapproved by Unit Owners holding a majority of the Association vote. The Board of Directors of the Association may from time to time during each year make reasonable adjustments in such estimated amounts on the basis of actual cost or expense incurred or for any emergency or unforeseen expenses. Except as permitted by Subsections (a) and (b) of Section 44-3-80 of the Act and by Subsections (a) and (b) of Section 44-3-109 of the Act, a special assessment per Unit in excess of an average of \$200.00 per fiscal year may not be imposed by the Association without the approval of a majority of the Unit Owners. Except as otherwise provided in this Declaration, assessments for the estimated

amount of common expenses shall be allocated and assessed by the Association against the Units in the percentages shown on Exhibit "C".

4.06 Payment of Assessments. The assessments provided for herein shall be established on a calendar year basis except as hereinafter provided, and each Unit Owner shall pay their respective assessment in equal monthly installments in advance on or before the first day of each month unless otherwise provided by the Board of Directors of the Association. In the event an assessment is not established for a year by January 1 of that year, the assessment shall be the same as the preceding year until a new assessment is established. Any deficiency caused by such a delay may be made payable as the Board of Directors of the Association shall reasonably determine. The assessments for common expenses shall commence the date this Declaration is recorded in the Fulton County, Georgia Records. No Unit Owner (other than the Association if it becomes Unit Owner) shall be exempt from any liability to pay all of any assessment for common expenses for any reason whatever, including without limitation abandonment, non-use, or waiver of the use or enjoyment of his Unit or any part of the Common Element. Assessments for capital improvements and emergencies as provided above need not be on a calendar year basis and may be payable in whole or in installments on such date or dates as reasonably determined by the Board of Directors of the Association. No delay, failure, or omission on the part of the Association or any aggrieved Unit Owner or Owners in exercising any right, power or remedy provided in this Declaration or the By-Laws or as required by law or equity shall be deemed to be an abatement of any assessment or relieve any Unit Owner from paying any assessment when due.

4.07 Non-Payment of Assessments. Any assessment or installment thereof not paid within five (5) days after the due date shall be delinquent and shall:

- (a) Subject the delinquent Unit Owner to the imposition of a late charge in such amount, not in excess of the greater of Ten Dollars (\$10.00) or 10% of each assessment or installment thereof not paid when due, as determined from time to time by the Association;
- (b) In addition to a late charge relating thereto, bear interest from the date the same was due and payable at the rate of 10% per annum;
- (c) Entitle the Association to collect from the delinquent Unit Owner all costs of collection, including court costs, the expenses of sale, any expenses required for the protection and preservation of the delinquent Owner's Unit and reasonable attorney's fees actually incurred;
- (d) Entitle the Association to collect from the delinquent Unit Owner the fair rental value of said Unit Owner's Unit from the time of the institution of suit until the sale of the Unit at foreclosure (or until the judgment rendered in such suit is otherwise satisfied);
- (e) Entitle the Association to accelerate the assessment in accordance with the provision therefor in the By-Laws.

4.08 Disposition of Surplus. Any surplus remaining after payment of the common expenses shall appertain to the Units in the same proportion as their respective share of the Common Elements. Any such surplus shall, at the discretion of the Board of Directors, be distributed to the Unit Owners, credited to the next assessments chargeable to the Unit Owners or placed in a reserve account.

4.09 Working Capital Fund. The Association shall have a working capital fund to meet unforeseen expenditures or to purchase any additional equipment or services. The initial working capital fund shall be equal to two months of the estimated assessments for common expenses for each Unit and shall be collected either at the time the sale of a Unit by Declarant is closed or when control of the Association is transferred by Declarant to the Unit Owners, whichever is earlier. The amounts paid into the working capital fund shall not be an advance payment of regular assessments. If not already within the control of the Association, the working capital fund shall be transferred to the Association when control of the Association is transferred to the Unit Owners by Declarant and deposited in a segregated fund by the Association. Declarant shall not use the working capital fund to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits while Declarant is in control of the Association. Declarant may require any purchaser of a Unit from Declarant at the Closing of the sale of the Unit to reimburse Declarant for the contribution to the working capital fund made by Declarant in connection with such Unit.

4.10 Capital Contribution Assessment Upon Transfer of Units. In addition to all other assessments, fees and charges provided for herein, the purchaser or grantee of every Unit shall be assessed and be subject to a non-refundable, non-prorated capital contribution assessment (“Capital Contribution Assessment”) upon each and every conveyance or transfer of the Unit to any person other than to the spouse or heir of the Owner. The Capital Contribution Assessment shall be an amount equal to one/sixth (1/6) of the annual assessment applicable to such Unit at the time of such conveyance or transfer. The Board may increase the Capital Contribution Assessment each year not more than ten (10%) percent above the prior year’s Capital Contribution Assessment amount.

The Capital Contribution Assessment shall be due and payable by the purchaser or grantee at the time of conveyance or transfer of the Unit and shall be collected at the closing of each such conveyance or transfer. The Capital Contribution Assessment shall not constitute an advance payment of annual assessments. The Capital Contribution Assessment shall constitute a specific special assessment and continuing lien against such Unit, and a personal obligation of the Owner of such Unit, from the time it is due until it is paid in full and may be collected pursuant to Section 4.07 above and the Georgia Condominium Act.

## ARTICLE V – INSURANCE

5.01 General. The Association shall obtain and maintain at all times the types of insurance policies herein set forth. The premiums for such insurance policies shall be a common expense of the Association. The Board of Directors, in their discretion, may obtain such other insurance as reasonably necessary or desirable for the benefit of the Condominium.

5.02 Types of Insurance.

- (a) Casualty. The Association shall obtain a casualty insurance policy or policies affording fire and extended coverage insurance for, and in an amount consonant with the full replacement value of, all structures and other insurable improvements within the Condominium; provided, however, that the Association may exclude from such coverage (i) improvements and betterments made by the Unit Owners, and/or (ii) structures covered by builder's risk insurance in an amount consistent with the full replacement value thereof, but only during such period of time as such builder's risk insurance remains in full force and effect and only on the condition that the Association is named as an additional insured.
- (b) Liability. The Association shall obtain a liability insurance policy or policies, in amounts determined by the Board of Directors, but no less than \$1,000,000 for injury, including death, to a single person; \$1,000,000 for injury or injuries, including death, arising out of a single occurrence; and \$50,000 property damage; or in the alternative, a liability policy affording coverage for bodily injury and property damage with a combined single limit in an amount not less than \$1,050,000.00. The policy or policies shall cover the Association, the Board of Directors and the officers of Association, all agents and employees of the Association and all Unit Owners and other persons entitled to occupy any Unit or other portion of the Condominium for occurrences commonly insured against arising out of or in connection with the use, ownership or maintenance of the Common Elements or other portions of the Condominium which the Association has the responsibility to maintain.
- (c) Fidelity Bond. The Association shall obtain and maintain at all times a master or blanket fidelity bond for all officers, directors, trustees and employees of the Association, managing agents and all other persons handling or responsible for funds of the Association. The amount of coverage shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Association or any management agent at any given time during the term of each bond. However, in no event may the aggregate amount of such bond be less than a sum equal to three months aggregate assessments on all Units plus reserve funds. The fidelity bond must to the reasonable extent possible meet the following requirements:
  - (i) The fidelity bond must name the Association as an obligee;



- (ii) The bond shall contain waivers by insurers of the bond of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees”, or similar terms; and
- (iii) The bond shall provide that it may not be canceled or substantially modified without at least 20 days prior written notice to the Association and Lenders whose name and address have been previously furnished to the insurer with a request for such notice.
- (iv) The bond shall cover the maximum funds that will be in the custody of the Association or its managing agents at any time while the policy is in force.

5.03 Unit Owners’ Policies. The Unit Owners and Lenders may purchase and cany at their own expense any type of insurance policy or policies as they may desire from time to time; provided, however, that in no event shall any recovery or payment under any insurance policy obtained by the Association be affected or diminished by any such Unit Owner’s or Lender’s policy and no such policy shall provide for contribution by any insurance policy obtained by the Association nor shall it decrease in any other way the amount which the Association may realize under any insurance policy which it may have in force on any portion of the Condominium.

5.04 Insurance Proceeds. All insurance policies purchased by and in the name of the Association shall provide that proceeds covering property losses shall be paid to the Association. The Association shall receive such proceeds as are paid and delivered to it and hold them in trust for the benefit of the Unit Owners and their Lenders as their interests may appear. Such proceeds, or such portion thereof as may be required for such purpose, shall be distributed by the Association in payment of repairs or reconstruction or to the Unit Owners and their Lender jointly if such damaged property is not repaired or reconstructed as hereinafter provided. Any proceeds remaining after defraying all costs of repairs or reconstruction shall be disbursed to the Unit Owners of the damaged or destroyed Units and their Lender, or in the same proportion of their respective share of Common Elements if the Common-Elements are damaged or destroyed, remittances to Unit Owners and their Lenders being payable jointly to them.

5.05 Insufficient Insurance Proceeds. If the insurance proceeds are not sufficient to defray the cost of repair and reconstruction of the damaged Property, the Association may levy a special assessment against the Unit Owners of the damaged or destroyed Units, and against all Unit Owners in the case of damage to Common Elements, in sufficient amounts to provide funds to pay the excess cost of repair or reconstruction. Additional assessments may be made in like manner at any time nearing or following the completion of any repair or reconstruction. Any funds required for restoration of a Unit in excess of the insurance proceeds attributable thereto shall be assessed against the Unit Owner of that Unit. Assessments, if any, against Unit Owners for damage to the Common Elements shall be levied in the same proportion of their

respective share of Common Elements.

5.06 Damage and Destruction.

- (a) Estimates, Repair, or Reconstruction. As soon as practicable after any damage by fire or other casualty to the Property, the Association shall proceed with the filing and adjustment of all claims arising under insurance purchased by the Association which covers such damaged or destroyed Property and obtain reliable and detailed estimates of the costs of repair or reconstruction of the damaged or destroyed Property. Repair or reconstruction, as used herein, means repairing or restoring the damaged Property substantially in accordance with the original plans and specifications to substantially the same condition in which it existed prior to the fire or other casualty; provided, however such damaged Property may be repaired or restored to a substantially different condition with the approval of (i) the Board of Directors, (ii) a majority of the votes in the Association, (iii) at least 51% of the votes of the First Mortgagees (with First Mortgagees having one (1) vote per security deed held on a Unit), and (iv) if the damaged Property is a part or all of a Unit, with the approval of the Owner of such Unit and the First Mortgagee of such Unit.
- (b) Determination. Any damaged or destroyed Property shall be repaired or reconstructed unless: (i) the Condominium is terminated pursuant to the provisions of Section 44-3-98 of the Act, (ii) the damaged or destroyed portion of the Property is withdrawn from the Condominium pursuant to Section 44-3-99 of the Act, (iii) in the case of Units, the Unit Owners of the damaged or destroyed Units, together with two-thirds of the votes of the Unit Owners of the other Units exclusive of the vote appertaining to any damaged or destroyed Units, agree not to repair or reconstruct such damaged or destroyed Units and reallocate the undivided interest in the Common Elements and the votes in the Association appertaining to such Units not repaired or reconstructed to the remaining Units pursuant to Section 44-3-94 of the Act, or (iv) in the case of Common Elements, two-thirds of the votes of the Unit Owners vote not to repair or reconstruct such Common Elements. Any such determination shall be conclusively made within 90 days after the casualty or loss. Consent from the First Mortgagees shall be obtained as required by Section 10.02 hereof for the foregoing. To the extent damaged or destroyed Property is not repaired or reconstructed, the insurance proceeds attributable to such damaged or destroyed Units shall be disbursed by the Association to the beneficial Unit Owners of the damaged or destroyed Units. To the extent damaged or destroyed Property not repaired or reconstructed is Common Elements, the insurance proceeds attributable to such Common Elements shall be distributed to all Unit Owners according to their respective share of Common Elements. Remittances to any Unit Owner shall be paid jointly to such Unit Owner and his Lender. In the event the Property is not repaired or reconstructed, the area where the damaged or destroyed Property was located shall be placed in an aesthetically pleasing

condition in harmony with the other portions of the Condominium, the expense of such work to be specially assessed against the Owner of such Unit to the extent damaged or destroyed Property is a Unit and specially assessed against all Unit Owners in the same proportion of their respective share of the Common Elements to the extent the damaged or destroyed Property is Common Elements.

5.07 Insurance Trustee. Notwithstanding anything to the contrary contained herein, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom such Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Each Unit Owner appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including without limitation: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of settlement and releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

## ARTICLE VI – RESTRICTIONS

6.01 Residential Use. Each Unit shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Unit or any part of the Property, except that the Owner or occupant residing in a Unit may conduct such business activities within the Unit so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Unit; (b) the business activity does not involve persons coming onto the Property who do not reside on the Property; (c) the business activity conforms to all zoning requirements for the Property; (d) the business activity does not increase the liability or casualty insurance obligation or premium of the Association; and (e) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use, as may be determined in the sole discretion of the Board of Directors.

"Business" or "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, including, but not limited to, the following definitions: (i) employment of one or more persons for the purpose of earning a livelihood; (ii) any conduct or activities carried on for the purpose of earning a livelihood or contributing to a person's livelihood; (iii) any activities of a person carried on with the intent of improving that person's economic or financial condition; (iv) the occupation, work, or trade in which a person is engaged, including the giving or teaching of any kind of lessons, public or private, regardless of whether such activities or conduct are engaged in for profit and regardless of whether such activities require

obtaining a license; and (v) any commercial, industrial, or professional dealings.

Notwithstanding anything to the contrary contained in this Section 6.01 or this Declaration to the contrary, Declarant may use one or more of the Units owned or leased by Declarant to conduct sales and rental activities, as models, and for storage and maintenance purposes.

6.02 Temporary Structures. No structures of a temporary nature, nor any trailer, tent, shack, shed, barn or other outside buildings shall be allowed on any portion of the Property at any time either temporarily or permanently.

6.03 Planting. No planting or gardening shall be done without the prior written approval of the Board of Directors.

6.04 Clothes Drying. No drying or airing of clothes outside is permitted.

6.05 Architectural Standards. The Board of Directors or its designees shall be responsible for maintaining and enforcing the architectural standards of the Association. No Owner, occupant, lessee or lessor, or any-other person may make any exterior change, alteration, or addition, nor construct, erect, place, or post any sign, object, light, or thing on the exterior of the buildings or any Common Element or any porches without first obtaining the written approval of the Board of Directors and Declarant as long as Declarant owns one or more Units primarily for sale. Application shall be in writing and shall provide such information as the Board of Directors may reasonably require. The Board of Directors may publish written architectural standards for exterior alterations or additions, and any request in substantial compliance with any such published standards shall be approved. In the event that the Board of Directors fails to approve or to disapprove such application within ninety (90) days after it has been submitted, the application shall be deemed approved and this Section 6.05 shall be deemed complied with; provided that even if the requirements of this section are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of this Declaration or the By-Laws or any building code or zoning ordinance or any other applicable law, ordinance or regulation. As a condition of approval for a requested architectural change, modification, addition, or alteration of the grounds or landscape affected to facilitate an architectural change, modification, addition, or alteration, an Owner, on behalf of himself and his successors-in-interest, shall assume all responsibility for maintenance, repair, and replacement and insurance to or on such change, modification, addition, or alteration. In the discretion of the Board of Directors, an Owner may be made to verify such condition of approval by written instrument acknowledged by such Owner on behalf of himself and his successors-in-interest. The provision of this Section 6.05 shall not apply to the initial construction of any improvements by Declarant or to any exterior changes, alteration, or additions or any construction, erection, placing or posting of any sign, object, light or thing on the exterior of any buildings or any Common Element by Declarant.

6.06 Satellite Dishes. An Owner shall not install a satellite reception dish on the exterior of the Owner's Unit without the prior written consent of the Board of Directors.

6.07 Visible Areas. Nothing may be hung or displayed on the outside or inside of windows except interior inoffensive drapes, curtains, or louvered blinds which, from exterior observation, must be white, beige, or light gray, or as otherwise authorized by the Board of Directors, or placed on the outside walls of a building or otherwise outside of a Unit, or any part thereof. No awning, canopy, shutter or television or citizens, band or other radio antenna or transmitter, or any other device or ornament (except as set forth in Section 6.06), may be affixed to or placed upon an exterior wall or roof or any part thereof, or the exterior of any door or window, or in, on, or over a patio, porch or balcony, visible to the exterior, unless authorized by the Board of Directors. Nothing visible to the exterior may be hung, placed, displayed, or maintained in Limited Common Elements unless approved, in writing, by the Board of Directors.

6.08 Animals or Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any part of the Condominium, except that dogs, cats or other common household pets may be kept by the respective Unit Owners in their respective Units provided (i) they are not kept, bred or maintained for any commercial purposes, (ii) the maintaining of pets shall be subject to such rules and regulations as the Board of Directors may from time to time promulgate, including, without limitation, the right to levy fines against persons who do not clean up after their pets, provided however, the Board of Directors shall not have the right to prohibit the right to maintain a pet then owned by a Unit Owner or occupying a Unit unless the Board of Directors determines that maintenance of the pet constitutes a nuisance or creates a detrimental effect on the Condominium or other Units or occupants; and (iii) when outside each pet must be on a leash or caged and be under the control of a responsible person.

6.09 Common Elements. All Occupants of Units and their guests shall have a non-exclusive right to the use of the Common Elements, other than the Limited Common Elements, for the purposes for which they are reasonably intended, subject, however, to the following:

- (a) No such use shall encroach upon the lawful rights of other persons;
- (b) The right of the Board of Directors to restrict the use and to govern the operation of the Common Elements by promulgating reasonable rules and regulations with respect thereto.

Those portions of the Common Elements described in this Declaration that are Limited Common Elements will be used and possessed exclusively by the Owners and occupants of the Unit or Units served by the same and may be used only for the purposes intended.

6.10 Leasing. In order to protect the equity of the individual Unit Owners at 1350 North Morningside, and to carry out the purpose for which the Condominium was formed by preserving the character of the Condominium as a homogenous residential community of predominantly owner-occupied homes, leasing of Units shall be governed by the restrictions imposed by this Section. Except as provided herein, leasing of Units is prohibited.

(a) Definitions.

- (i) “Effective Date” means the date this Amendment is recorded in the Fulton County, Georgia land records.
- (ii) “Grandfathered Owner” means an Owner of a Unit who is lawfully leasing his or her Unit on Effective Date. Grandfathering shall apply only to the Unit owned by such Grandfathered Owner on the Effective Date. Grandfathering hereunder shall continue only until the earlier of: (1) the date the Grandfathered Owner conveys title to the Grandfathered Unit to any other person (other than the Owner’s spouse), or (2) the date that all current occupants of the Grandfathered Owner’s Unit vacate and cease to occupy the Unit. Upon either event, the Unit shall automatically lose grandfathering hereunder.
- (iii) “Grandfathered Unit” means the Unit owned by a Grandfathered Owner on the Effective Date hereof.
- (iv) “Leasing” means the regular, exclusive occupancy of a Unit by any person(s) other than (1) the Owner or a parent, child, or spouse of an Owner, or (2) a person who occupies the Unit with the Owner or parent, child or spouse of the Owner occupying the Unit as his or her primary residence.

- (b) Leasing Permit and Restriction. No Owner of a Unit may lease his or her Unit unless: (1) the Owner is a Grandfathered Owner, (2) the Owner is not a Grandfathered Owner but has received a written leasing permit from the Board of Directors authorizing leasing, or (3) the Owner is not a Grandfathered Owner but has received a hardship leasing permit from the Board as provided below.

Non-Grandfathered Owners who want to lease their Units may do so only if they have applied for and received from the Board of Directors either a “leasing permit” or a “hardship leasing permit”. Such a permit will allow an Owner to lease his or her Unit, provided that such leasing is in strict accordance with the terms of the permit and this Section. The Board of Directors shall have the authority to establish conditions as to the duration and use of such permits consistent with this Section. Unless otherwise agreed to in writing by the Board of Directors, all leasing permits shall automatically expire two (2) years after the date they are issued to the Owner. All leasing permits and hardship leasing permits shall be valid only as to a specific Owner and Unit and shall not be transferable between either Units or Owners (including a subsequent Owner of a Unit where a permit was issued to the Owner’s predecessor in title).

An Owner's request for a leasing permit shall be approved if: (1) the Owner has owned and occupied the Unit as their principal and primary residence for at least 12 consecutive months at any point in time prior to requesting a leasing permit; (2) the Owner has not leased the Unit in the past twelve (12) months; and (3) the number of current, outstanding permits issued plus Grandfathered Units is less than four (4) Units in 1350 North Morningside.

Leasing permits and hardship leasing permits are automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Unit to a third party (excluding sales or transfers to an Owner's spouse); or (2) the failure of an Owner to lease his or her Unit for sixty (60) consecutive days at any time after the issuance of a leasing permit. When a leasing permit expires or is revoked, the Owner may request another leasing permit or, if such leasing permit is not available, the Owner may request to be placed on a waiting list for a leasing permit.

If the number of current leasing permits issued and Grandfathered Units is more than four (4) Units, then no additional leasing permits shall be Issued (except for hardship leasing permits) until that number falls below four (4). Owners who have been denied a leasing permit shall automatically be placed on a waiting list for a leasing permit and shall be issued a permit, if they so desire, when such number falls below four (4). The issuance of a hardship leasing permit to an Owner shall not cause the Owner to be removed from the waiting list for a leasing permit.

- (c) Hardship Leasing Permits. If the failure to lease will result in an undue hardship to the Owner, then the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a hardship leasing permit. The Board shall have the authority to issue or deny requests for hardship leasing permits In its discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship, (2) the harm, if any, which will result to the Condominium If the permit is approved, (3) the number of hardship leasing permits which have been issued to other Owners, (4) the Owner's ability to cure the hardship, and (5) whether previous hardship leasing permits have been issued to the Owner.

A "hardship" as described herein shall include, but not be limited to, the following situations: (1) an Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six (6) months from the date that the Unit was placed on the market, sell the Unit except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) an Owner dies and the Unit is being administered by his or her estate; or (3) an Owner takes a leave of absence or temporarily relocates out of the metropolitan-Atlanta area and intends to return to reside in the Unit within one (1) year.

Hardship leasing permits shall be valid for a term not to exceed one (1) year. Owners may apply for additional hardship leasing permits at the expiration of a hardship leasing permit, if the circumstances warrant. Hardship leasing permits shall be automatically revoked if, during the term of the permit, the Owner is approved for and receives a leasing permit.

- (d) Leasing Provisions. When leasing is permitted under this Section, it shall be governed by the following provisions:
- (i) Notice. At least seven (7) days before entering into a lease, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. If a lease is disapproved, the Board shall notify the Owner of the action to be taken to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.
  - (ii) General. Units may be leased only in their entirety; no rooms or fractions of Units may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. There shall be no subleasing of Units or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Unit. The Owner must provide the lessee copies of the Declaration, By-Laws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.
  - (iii) Liability for Assessments: Compliance. Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:
    - (A) Compliance with Declaration, By-Laws, and Rules and Regulations. The Owner and lessee shall comply with all provisions of the Declaration, By-Laws and Association rules and shall control the conduct of all other occupants



and guests of the leased Unit in order to ensure such compliance. The Owner shall cause all occupants of his or her Unit to comply with the Declaration, By-Laws and Association rules, and shall be responsible for all violations by such occupants, notwithstanding the fact that such Occupants are fully liable and may be sanctioned for any such violation.

If a Unit is leased or occupied in violation of this Section or if the Owner, lessee, or a person living with the lessee, violates the Declaration, By-Laws, or a rule or regulation, the Association's Board of Directors shall be authorized, in addition to all other available remedies, to levy fines against the lessee and/or the Owner, to suspend all voting and/or Common Element use privileges of the Owner, Occupants and unauthorized tenant(s) and to suspend all common services to the Unit paid for by the Association as a common expense, including water service to the Unit, subject to the provisions of this Declaration and the By-Laws.

If a Unit is leased or occupied in violation of this Section, the Association may require the Owner to evict the tenant. If the Owner, lessee, or a person living with the lessee, violates the Declaration, By-Laws, or a rule or regulation, such violation is deemed to be a default under the terms of the lease and shall authorize the Owner or the Association, as more fully described herein, to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, Including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. Alternatively, the Association may require the Owner to evict the violating tenant. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Unit.

Use of Common Elements. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Elements, including, but not limited to, the use

of any and all recreational facilities.

- (B) Liability for Assessments. When an Owner who is leasing his or her Unit fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee falls to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.
- (e) Applicability of this Section. Notwithstanding the above, this Section shall not apply to any leasing transaction entered into by the Association, or by any first Mortgagee who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage. Such parties shall be permitted to lease a Unit without first obtaining a permit in accordance with this Section, and such Units shall not be considered as being leased in determining the maximum number of Units that may be leased in accordance with this Section.
- (f) Leasing Administration Fee. In addition to all other assessments and other charges provided for herein, an Owner who leases a Unit hereunder shall be officially assessed and required to pay to the Association a leasing administration fee ("Leasing Administration Fee") upon issuance of a leasing permit or hardship leasing permit and for each new lease executed under that leasing permit or hardship leasing permit to offset resources and costs expended by the Association in administering leasing regulations and providing building maintenance related to the move ins and move outs of occupants.

The Leasing Administration Fee is due at the time any lease is executed or a new occupancy relationship is created hereunder. The dollar amount of the leasing Administration Fee shall be established and modified by the Board of Directors. The Leasing Administration Fee constitutes a specific assessment hereunder and is non-refundable.

6.11 Signs. Except as hereinafter provided for Declarant, no advertising signs of any kind, except one “For Rent” or “For Sale” sign per Unit of not more than nine (9) square feet placed only inside the enclosed Unit, shall be erected, placed, or permitted to remain on the Property without the written consent of the Board of Directors or its designee. The Board of Directors shall have the right to erect reasonable and appropriate signs. However, the foregoing covenant shall not apply to the business activities, signs and billboards of Declarant or its duly authorized agents, representatives, or employees while Declarant owns one or more Units primarily for the purpose of sale.

6.12 Vehicles. The Board may promulgate rules and regulations restricting or prohibiting the parking of automobiles, vans, buses, inoperable vehicles, trucks, trailers, boats and recreational vehicles on the Common Areas, or parts thereof, and may enforce such regulations or restrictions by levying enforcement charges, having such vehicles towed away, or taking such other lawful actions as it deems appropriate. The provisions of this Section 6.12 shall not apply to Declarant or its duly authorized agents, representatives, contractors, suppliers, or employees.

6.13 Parking. Parking shall only be permitted within the areas designated for parking on the Common Elements.

6.14 No Repairs. No repairs or similar activity to boats, trailers, or vehicles of any nature shall be permitted to be performed on the Common Elements, except in the event of an emergency.

6.15 Rules and Regulations. Subject to the approval of Declarant while Declarant owns any Unit primarily for the purpose of sale, which approval may be granted or withheld in Declarant’s sole and unfettered discretion, the Board of Directors may adopt, and amend from time to time, rules and regulations, as provided in Section 3.05, concerning the use of the Property which rules and regulations may be in addition to, but not conflict with, the restrictions in this Declaration.

6.16 Nuisance. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Property, and no odor shall be permitted to arise therefrom, so as to render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using or occupying other portions of the Condominium. No nuisance shall be permitted to exist or operate upon any portion of the Condominium so as to be offensive or detrimental to persons using or occupying the portions of the Condominium.

6.17 Prohibited Activities. Noxious or offensive activities shall not be carried out in any Unit or in the Common Elements. Each Unit Owner, his family, guests, invitees, servants and agents shall refrain from any act in his Unit or on the Common

Elements which could reasonably cause embarrassment, discomfort, annoyance or a nuisance to the Occupants of the Units or which may result in cancellation or increase in premium of any insurance on any Unit or any portion of the Common Elements, or which would be in violation of any law, code, or governmental regulations.

6.18 Discrimination. No action at any time shall be taken by the Association or its Board of Directors which in any manner would for reasons of race, creed, color, sex, religion, or national origin discriminate against any Unit Owner or Unit Owners in favor of any other Unit Owner or Unit Owners.

6.19 Heating of Dwellings in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to the Property, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an “on” position and at a minimum of fifty-five (55) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) during the months of October, November, December, January, February, March and April whenever the temperature is forecast to or does reach thirty-two (32) degrees Fahrenheit or below. Owners and occupants of Units shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Unit Owner or occupant shall immediately inform the Board of Directors of this failure of the equipment and of the time needed to repair the equipment. Notwithstanding any provision to the contrary, any Owner or occupant may be fined up to Five Hundred (\$500.00) Dollars for violation of this requirement by the Board of Directors, in addition to any other remedies of the Association, without a prior warning, demand, or hearing. Any fine imposed pursuant to this paragraph shall be deemed an assessment against the Unit and may be collected in the same manner as provided herein for the collection of assessments.

6.20 Single Families. No Unit shall be occupied by more than a single family. As used herein, the term “single family” shall mean one or more persons, provided all persons occupying the Unit are interrelated by blood, adoption, or marriage, or, if persons occupying a Unit are not all interrelated by blood, adoption, or marriage, then the occupancy of that Unit shall be limited to a maximum of three (3) persons. The words “by blood” shall be deemed to encompass only children, grandchildren, grandparents, brothers, sisters, nieces, nephews, parents, aunts, uncles, and first cousins, and no other degree of kinship. “Occupancy”, for the purposes of this Declaration, shall be defined as staying overnight in a Unit for a total of more than thirty (30) days, either consecutive or non-consecutive, in any year.

6.21 Construction in Easements. No structure, planting or other material may be placed or permitted to remain within the easements for the installation and maintenance of utilities and drainage facilities which may damage or interfere with the installation and maintenance of utility lines, or which may change the direction of the flow or drainage channels in the easement areas. The utility facilities within the easement areas will be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

## ARTICLE VII – EASEMENTS

In addition to the easements granted to each Unit Owner in regard to the Common Elements set forth in Section 6.09, and the easements set forth in the Act, there shall exist the following easements or easement rights:

- (a) The Association shall have easements upon, over and under all of the Property for ingress to and egress from, and the installation, replacing, repairing and maintaining of, all utilities, including but not limited to water, sewer, gas, telephone, electricity, security systems, master television antennas and cable television, and the road system and all walkways, for all purposes necessary for the proper operation of the Property.
- (b) The Association shall have the power to grant and accept easements over, through, and across Common Elements for the installation, maintenance, and replacement of utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Condominium, and in addition, if the Board of Directors determine that the grant of easement rights to others is in the best interest of the Association, the Association shall have the right to grant the same, provided that the use of the same would not, in the judgment of the Board of Directors, unreasonably interfere with the use and enjoyment of the Property by Unit Owners;
- (c) The Association shall have a right of entry and access to, over, upon and through all of the Property, including each Unit and the Limited Common Elements, to enable the Association to perform its obligations, rights, and duties pursuant to this Declaration with regard to maintenance, repair, restoration and/or servicing of any items, things, or areas of or in the Condominium Property. In the event of an emergency, the Association's right of entry to a Unit and its appurtenant Limited Common Elements may be exercised without notice. Otherwise, the Association shall give the Owners or Occupants of a Unit no less than twenty-four hours advance notice prior to entering a Unit or its appurtenant Limited Common Elements.
- (d) Notwithstanding anything to the contrary contained in this Declaration, Declarant and its duly authorized agents, representatives and employees shall have the following easements until the date Declarant no longer owns a Unit primarily for the purpose of sale to maintain sales offices, rental offices, model units, a construction trailer, portable potties and construction offices on the Property; to go on and over the Common Elements to conduct sales, rental and construction activities and to construct and maintain signs and structures in connection therewith; and to park vehicles on the paved surfaces the Common Elements.

- (e) Notwithstanding anything to the contrary contained in this Declaration, Declarant and its duly authorized agents, representatives, and employees shall have a perpetual non-exclusive easement over the Common Elements for the construction and completion of improvements and making repairs on the Property and for parking of vehicles on the paved surfaces in connection therewith.
- (f) If any portion of the Common Elements encroaches upon any Unit or any Unit encroaches upon the Common Elements or another Unit as a result of the construction, re-construction, repair, shifting, settlement or movement of any portion of the improvements there shall be an easement for such encroachment and for the maintenance of the same for as long as such encroachment shall exist, provided the physical boundaries of the Units after such construction, reconstruction or repairs are in substantial accord with the description of those boundaries set forth in the Plans and Exhibit "B" of this Declaration.
- (g) There shall be non-exclusive easements for all police, firemen, ambulance operators, mailmen, delivery men, garbage men, and all similar persons, and to the local governmental authorities and the Association, but not the public in general, to enter upon the Common Elements in the performance of their duties, subject to reasonable rules and regulations as the Board may establish from time to time.

## ARTICLE VIII – GENERAL PROVISIONS

8.01 Termination of the Condominium. The Condominium may be terminated pursuant to the provisions of Section 44-3-98 of the Act.

8.02 Withdrawal of Submitted Property. Portions of the Condominium may be withdrawn pursuant to the provisions of Section 44-3-99 of the Act.

8.03 Amendments. This Declaration may be amended pursuant to the provisions of Section 44-3-93 of the Act, other provisions of the Act and as otherwise provided in this Declaration. Notwithstanding the foregoing to the contrary, every amendment to this Declaration is subject to the prior written approval of Declarant so long as Declarant owns any Unit primarily for the purpose of sale.

8.04 Eminent Domain. The provisions of Section 44 3-97 of the Act shall apply in the event any or all the Property shall be taken by eminent domain. The Association shall represent the Unit Owners in condemnation proceedings or in negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Elements, or part thereof, by the condemning authority and each Unit Owner appoints the Association as attorney-in-fact for such purpose. In the event of a taking or acquisition of part or all the Common Elements by a condemning authority, the

award or proceeds of settlement shall be payable to the Association to be held in trust for Unit Owners and their First Mortgages as their interests may appear.

8.05 No Priority over First Mortgagee. No Owner or any other party shall have priority over any rights of any First Mortgage pursuant to its deed to secure debt in case of a payment to the Owner of insurance proceeds or condemnation awards for losses to or a taking of Units and/or Common Elements.

8.06 Governmental Laws. Each Unit Owner, and the Association shall comply with all applicable governmental laws, statutes, ordinances, and regulations (the “Laws”) affecting the Units and the Common Elements and each party violating the Laws shall hold harmless and indemnify the others from and against all claims and damages, including court costs, attorney fees and costs of investigation arising out of such violation.

8.07 Severability. If any provision of this Declaration shall be deemed to be invalid or unenforceable, the remainder of this Declaration shall not be affected thereby.

8.08 Gender and Grammar. The singular whenever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, masculine or feminine shall be assumed as though in each case fully expressed.

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

8.10 Controlling Law. The terms and conditions of this Declaration shall be governed by the laws of the State of Georgia.

8.11 Notice.

- (a) To the Association. Any notice to be given to the Association shall be delivered to the office of the Association, if any, or deposited in the mail, postage prepaid, addressed to the Association at the address of the office of the Association or at such other address last designated by notice to the Unit Owner. Such notice shall be given upon hand delivery to the office of the Association, if any, or, if mailed, two business days after depositing in the mail.
- (b) To a Unit Owner or Occupant. Any notice to be given to a Unit Owner or occupant of a Unit shall be delivered to the Unit or deposited in the mail postage prepaid, addressed to the Unit Owner or occupant of a Unit at the address last designated by notice to the Association. Such notice shall be deemed given upon hand delivery to the Unit or, if mailed, two business days after depositing in the mail.

8.12 Documents Available. The Association shall make available for inspection upon request, during normal business hours or under other reasonable circumstances, to Unit Owners, First Mortgagees and prospective purchasers and First Mortgagees of a Unit current copies of the Declaration, the By-Laws and all other documents affecting the Condominium, including the books and records, financial statements, and the most recent audited financial statement, if one is prepared.

8.13 Meeting of the Association. A meeting of the members of the Association shall be called in the manner provided in the By-Laws upon the written request of at least 15 percent of the Unit Owners.

8.14 Preparation. See Bibliography for the attorney that prepared the original Declaration of Condominium document.

## ARTICLE IX – SUBORDINATION OF LIEN OF ASSESSMENT

The lien of the assessments provided for herein (including interest, costs, attorneys fees and late fees) shall be subordinate to (a) the lien held by any First Mortgagee, (b) the lien of any security deed recorded prior to the Declaration; (c) liens for ad valorem taxes on the Unit, and (d) the lien of any secondary purchase money security deed covering the Unit provided neither the grantee nor any successor grantee on the secondary purchase money security deed is the seller of the Unit. A seller transferring any Unit shall not affect the assessment lien. However, any First Mortgagee or any grantee of a secondary purchase money security deed (provided that neither the grantee nor any successor grantee on the secondary purchase money security deed is the seller of the Unit) transferring any Unit pursuant to a mortgage foreclosure, power of sale contained in a deed to secure debt, or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer; provided, that such unpaid assessments shall become part of the common expenses collectible from all Unit Owners, including the subsequent Owner of such Unit. No sale or transfer shall relieve such Unit from liability for any assessments thereafter becoming due or from the lien thereon.

## ARTICLE X – MORTGAGEES

10.01 Rights of First Mortgagees. Each First Mortgagee of a Unit shall:

- (a) Be entitled to written notice from the Association of any default in the performance by the Owner of a Unit secured by such First Mortgagee's security interest of any obligation under the Declaration, By-Laws, Articles, Rules and Regulations or other Condominium documents which remain uncured for a period of 60 days;
- (b) Be entitled to attend and observe all meetings of Unit Owners, but not meetings of the Association Board of Directors;



- (c) Be furnished copies of annual financial reports made to the Unit Owners and of any insurance policies affecting the Condominium and taken out by or on behalf of the Association;
- (d) Be entitled to inspect the financial books and records of the Association, current copies of the Declaration, By-Laws and other rules concerning the Condominium during reasonable business hours;
- (e) Be entitled to notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (f) Be entitled to notice of any proposed action which requires the consent of First Mortgagees as specified in Section 10.02;
- (g) Be entitled to written notice of any condemnation loss or any casualty loss which affects a material portion of the Condominium or the Unit securing its Unit;
- (h) Be entitled to written notice of any event which affects the Common Elements, or a Unit which is security for a First Mortgagee.

Only First Mortgagees who shall have first filed with the Association a written request that the notices set forth above be sent to a named agent or representative of the First Mortgagee at an address stated in such notice shall be entitled to receive the notices set forth above.

#### 10.02 Consent of First Mortgagees.

- (a) Unless Unit Owners who represent at least sixty seven percent (67%) of the total allocated votes in the Association and at least fifty one percent (51%) of the “Eligible First Mortgagees” have given their consent, the Association shall not be entitled to:
  - (i) Change the voting rights of Unit Owners or First Mortgagees;
  - (ii) Increase the assessments by more than 25% of the previously assessed amount, assessment liens, or the priority of assessment liens;
  - (iii) Reduce the reserves for maintenance, repair and replacement of Common Elements;
  - (iv) Change the responsibility for maintenance and repairs;
  - (v) Reallocate interests in the Common Elements or the Limited Common Elements or the right to their use;

- (vi) Redefine or change any Unit boundaries;
  - (vii) Change the convertibility of Units into Common Elements or vice versa;
  - (viii) Change the provisions that govern the expiration or contraction of the Condominium, or the addition, annexation, or withdrawal of Property to or from the Condominium;
  - (ix) Change the provisions that govern hazard insurance or fidelity insurance;
  - (x) Impose any restrictions on the leasing of Units;
  - (xi) Impose any restrictions on a Unit Owner's right to sell or transfer his Unit;
  - (xii) Establish self-management if professional management had been required previously by the Declaration or by a First Mortgagee;
  - (xiii) Change the provisions that govern restoration or repair of the Condominium after a hazard damage or partial condemnation in a manner other than that specified in the Declaration; or
  - (xiv) Change any provisions that expressly benefit First Mortgagees.
- (b) The termination of the Condominium for reasons other than substantial destruction or condemnation of the Property must be agreed to by at least sixty seven percent (67%) of the Eligible First Mortgagees. The termination of the Condominium after substantial destruction or condemnation occurs must be agreed to by at least fifty-one percent (51%) of the Eligible First Mortgagees.

For purposes of this Section 10.02, an Eligible First Mortgagee is a First Mortgagee who has submitted a written request that the Association notify them of any proposed action requiring the consent of a specified percentage of Eligible First Mortgagees.

For purposes of this Section 10.02, when a First Mortgagee who has requested notice as provided above fails to submit a written response to any written proposal for an amendment to the Declaration within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a return receipt requested, then such First Mortgagee shall be deemed to have approved such amendment.

**10.03 V.A. Approval.** The Condominium may not be merged with a successor condominium regime without the prior written approval of the Veterans Administration.

## ARTICLE XI – COMPLIANCE AND ENFORCEMENT

11.01 Compliance. Each Owner shall comply strictly with the By-Laws and with the rules and regulations adopted pursuant thereto, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, restrictions, and easements set forth in this Declaration or in the deed to his Unit. The Board of Directors may impose monetary fines or other sanctions as provided in the By-Laws, collection of which may be made as provided for therein.

11.02 Rights of Action. The Association and any aggrieved Unit Owner may bring an action against Unit Owners for the failure to comply with all lawful provisions of the Declaration, the By-Laws, the rules and regulations, or with decisions of the Association made by the Association pursuant to authority granted it by such Association. No delay, failure or omission on the part of the Association or any aggrieved Unit Owner or Owners in exercising any right, obligation, power or remedy provided in this Declaration or the By-Laws shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to do so thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue, nor shall any action be brought or maintained by anyone whatsoever against the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, of the provisions of this Declaration, the By-Laws or rules and regulations, however long continued, or for the imposing of provisions which may be unenforceable. In addition to the enforcement powers provided for herein, the Association may suspend an Owner's right to vote and/or to use the Common Elements for violation of any duty or limitation Imposed under the Declaration, By-Laws or Association rules. However, nothing herein shall authorize the Association or the Board of Directors to deny ingress or egress to or from a Unit. In any enforcement action taken by the Association under this Section, to the maximum extent permissible, all costs incurred by the Association in abating a violation or otherwise taking action to enforce the Declaration, By-Laws or Association rules, including reasonable attorney's fees actually incurred, may be assessed against the violating Owner and/or Occupant pursuant to Article IV above.

## EXHIBIT "A" – Property Legal Description

All that tract or parcel of land lying and being in Land Lot 2 of the 17th District of Fulton County, Georgia, and being more particularly described on the plat of survey as follows:

To find the POINT OF BEGINNING, commence at a point on the southwestern edge of the right-of-way of North Morningside Drive (70' R/W) at the intersection of North Morningside Drive and North Highland Avenue (60' R/W); thence northwesterly from said point 128.0 feet along said North Morningside Drive right-of-way to a 1" crimped pipe found and the POINT OF BEGINNING; thence from said POINT OF BEGINNING South 57° 10' 32" West a distance of 157.60 feet to a 1" crimped pipe found; thence North 39° 35' 27" West a distance of 122.00 feet to a 1" crimped pipe found; thence North 56° 53' 37" East a distance of 172.50 feet to a 1" pipe found on the southwestern edge of North Morningside Drive; thence South 32° 34' 40" East along the southwestern edge of North Morningside Drive a distance of 122.00 feet to a 1" crimped pipe found and the POINT OF BEGINNING; all as more particularly shown on a plat of survey entitled "Survey for 1350 North Morningside Condominiums" prepared by Joseph C. King, Land Survey No. 1478, dated September 14, 2000, which plat is incorporated herein and made a part of this legal description.

## EXHIBIT “B” – Units Description

### Units

Upper and Lower Boundaries. The upper boundary of each Unit is the horizontal plane of the unfinished upper interior surface of the ceiling. The upper boundary includes the plaster, drywall or other material forming the finished interior surface of the ceiling. The lower boundary of each Unit is the horizontal plane of the lower unfinished surface of the floor. The lower boundary includes the wood, tile or other material forming the finished flooring. The upper and lower boundaries of each Unit extend to their intersection with each other and the perimetrical boundaries of the Unit.

Perimetrical Boundaries. The perimetrical boundaries of each Unit are the vertical planes of the interior unfinished surface of the walls of the Unit (whether such walls separate the Unit from other Units or the Common Elements) and the vertical planes of the exterior surfaces of windows and entry doors, including sliding glass doors. The perimetrical boundaries include all doors and windows therein, and all sheetrock, lath, and wallboard. The materials constituting the interior finished surfaces of the walls, including without limitation, the molding, tiles, wallpaper and paint are within the boundaries of each Unit. The perimetrical boundaries of each Unit extend to their intersection of the upper and lower boundaries of the Unit.

General. Window screens and all fixtures, equipment and appliances located within the boundaries of each Unit are deemed to be a part of such Unit. Any heating and/or air conditioning compressors, units, components or other apparatus serving a Unit located beyond the boundaries of the Unit shall be deemed a part of that Unit, but any portions thereof serving more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements. If any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lie partially inside and partially outside of the designated boundaries of a Unit, any portions thereof serving only that Unit shall be deemed a part of that Unit, but any portions thereof serving more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements.

Porches. Unit 19 and Unit 20 each includes the screened porch as shown in the Plans.

# EXHIBIT “C” – Share of Common Expenses

<b>Unit#</b>	<b>Pro Rata Share</b>
Unit #1	3.22060%
Unit #2	4.02576%
Unit #3	5.15298%
Unit #4	5.15298%
Unit #5	5.15298%
Unit #6	5.15298%
Unit #7	5.15298%
Unit #8	5.15298%
Unit #9	5.15298%
Unit #10	5.15298%
Unit #11	5.15298%
Unit #12	5.15298%
Unit #13	5.15298%
Unit #14	5.15298%
Unit #15	5.15298%
Unit #16	5.15298%
Unit #17	5.15298%
Unit #18	5.15298%
Unit #19	5.15298%
Unit #20	5.15298%
<b>Total</b>	<b>100.000/0</b>

## EDITOR'S NOTE

Additional provisions appended to Declaration of Condominium by attorneys Weissman, Nowack, Curry, & Wilco, P.C. (January 14, 2005).

- “Ground Lease” – None
- “Management Contract having a term in excess of one year or renewable without consent of the Association” – None
- “Lease of recreational or other facilities that will be used only by Unit Owners of the Condominium” – None
- “Lease of recreational or other facilities that will or may be used by the Unit Owners with others” – None
- “A statement setting forth the extent of the seller’s commitment to build and submit additional units, additional recreational or other facilities, or additional properties” – Seller is not committed to build and submit additional units, additional recreational or other facilities, or additional properties.