

GEORGIA, FULTON COUNTY
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JUANITA HICKS
CLERK, SUPERIOR COURT

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
FOR
THE PONCE CONDOMINIUM

CROSS REFERENCE

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

Attorneys

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Return to:

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181 14th Street, 2nd Floor
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STATE OF GEORGIA

Reference: Deed Book 8237
Page 126

COUNTY OF FULTON

DECLARATION OF CONDOMINIUM

FOR

THE PONCE CONDOMINIUM

WHEREAS, Killian/Wilkinson, a Georgia partnership, recorded a Declaration of Condominium for The Ponce Condominium, on September 6, 1982, in Deed Book 8237, Page 126, et seq., Fulton County, Georgia Records (hereinafter referred to as the "Original Declaration"); and

WHEREAS, the Original Declaration has been previously amended by amendments recorded in the Fulton County, Georgia Records as follows:

Recording Date

Deed Book/Page

January 10, 1983

8343/283 et seq.

April 6, 1984

8919/336 et seq.

WHEREAS, a plat related to the Condominium was filed in Condominium Plat Book _____, Page(s) _____, Fulton County, Georgia Records; and

WHEREAS, floor plans relating to the Condominium were filed in Condominium File Cabinet No. 2, Folder No. 127, of the Fulton County, Georgia Records; and

WHEREAS, Article X, Section 10.02 of the Declaration provides for amendment of the Declaration in accordance with O.C.G.A. § 44-3-93, which provides for amendment by the assent of owners of units to which at least two-thirds (2/3) of the votes in The Ponce Condominium Association, Inc. ("Association") pertain; and

WHEREAS, members of the Association to which at least two-thirds (2/3) of the total votes in the Association pertain desire to amend and restate the Declaration and have approved this amendment and restatement of the Declaration; and

WHEREAS, in accordance with Article VII, Section 5 of the By-Laws of The Ponce Condominium Association, Inc. ("Original By-Laws"), the Original By-Laws may be amended by the affirmative vote of the majority of the votes of the members at any meeting of the members duly called for such purpose, such amendment having been proposed by the Association's Board of Directors; and

WHEREAS, at least a majority of the members of record have approved this amendment to the Original By-Laws at a meeting of the Association duly called for such purpose; and

WHEREAS, this amendment does not alter, modify, change or rescind any right, title, interest or privilege held by any mortgage holder of any Unit; provided, however, in the event a court of competent jurisdiction determines that this amendment does alter, modify, change or rescind any right, title, interest or privilege held by any such mortgage holder without such mortgage holder's consent in writing to this amendment, then this amendment shall not be binding on the mortgage holder so involved, unless such mortgage holder consents to this amendment; and if such consent is not forthcoming, then the provisions of the Original Declaration prior to this amendment shall control with respect to the affected mortgage holder;

NOW, THEREFORE, the Original By-Laws and the Original Declaration and all exhibits thereto, are hereby stricken in their entirety and the following is simultaneously substituted therefor:

DECLARATION OF CONDOMINIUM

FOR

THE PONCE CONDOMINIUM

1. NAME.

The name of the condominium is The Ponce Condominium (hereinafter sometimes called "Ponce" or the "Condominium," as further defined herein), which condominium is a residential condominium which hereby submits to the Georgia Condominium Act, O.C.G.A. Section 44-3-70, et seq. (Michie 1982).

2. DEFINITIONS.

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

(a) Act means the Georgia Condominium Act, O.C.G.A. Section 44-3-70, et seq. (Michie 1982), as may be amended.

(b) Architectural Control Committee or ACC means the committee established to exercise the architectural review powers set forth in Paragraph 13 hereof.

(c) Area of Common Responsibility means the Common Elements, together with those areas, if any, which by the terms of this Declaration or by agreement with any other Person become the Association's responsibility. The office of any property manager employed by or contracting with the Association, if located on the Condominium, or any public rights-of-way within or adjacent to the Condominium, may be part of the Area of Common Responsibility.

(d) Articles or Articles of Incorporation mean the Articles of Incorporation of The Ponce Condominium Association, Inc., which have been filed with the Secretary of State of the State of Georgia.

(e) Association means The Ponce Condominium Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

(f) Board or Board of Directors means the elected body responsible for management and operation of the Association.

(g) Bylaws means the Bylaws of The Ponce Condominium Association, Inc., attached hereto as Exhibit "C" and incorporated herein by this reference.

(h) Commercial Unit means any of the following Units: Unit 1, 100, 101 or 102.

(i) Common Elements mean those portions of the property subject to this Declaration which are not included within the boundaries of a Unit, as more particularly described herein.

(j) Common Expenses mean the expenses incurred or anticipated to be incurred by the Association for the general benefit of the Condominium, including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Elements and Area of Common Responsibility.

(k) Community-Wide Standard means the standard of conduct, maintenance,

or other activity generally prevailing within the Condominium. Such standard may be more specifically determined by the Board and the ACC.

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

(m) Condominium Instruments mean this Declaration and all exhibits hereto, including the Bylaws and the plats and plans, all as may be supplemented or amended.

(n) Declaration means this Amended and Restated Declaration of Condominium of The Ponce Condominium.

(o) Effective Date means the date that this Declaration is recorded in the Fulton County, Georgia land records.

(p) Eligible Mortgage Holder means the holder of a first mortgage secured by a Unit who has requested notice of certain items as set forth herein.

(q) Large Foyer Space means the area of approximately 305 square feet located on floors 2, 3, 4, 5, 6, 7, 8 and 9 of the Condominium, as shown on the Plans as the "Large Foyer Space".

(r) Limited Common Elements mean a portion of the Common Elements reserved for the exclusive use of those entitled to occupy one (1) or more, but less than all, Units, as more particularly set forth herein.

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

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

(u) Mortgagee or Mortgage Holder means the holder of any Mortgage.

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

(w) Olympics Leasing Period means the time period commencing April 1, 1996 and expiring September 15, 1996.

(x) Owner means the record title holder of a Unit, but shall not include a Mortgage Holder.

(y) Person means any individual, corporation, firm, association, partnership, trust, or other legal entity.

(z) Plans means the floor plans of the Units filed pursuant to this Declaration, together with any amendments thereto.

(aa) Residential Unit means any of the following Units: 201, 202E, 204, 206E, 207, 300, 301, 302, 303, 401, 402, 403, 404, 406E, 407, 501, 503, 504, 505, 506, 507, 601, 602E, 603, 604, 606E, 607, 701, 702, 703, 704, 706E, 707, 801, 802, 803, 804, 806E, 807, 901, 902E, 904, 906E, 907, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1010, 1101, 1102, 1103, 1104, 1105, 1106, 1107, 1108, 1109, 1200, 1201 and 1202

(bb) Unit means that portion of the Condominium intended for individual ownership and use as more particularly described herein and shall include the undivided ownership in the Common Elements assigned to the Unit hereunder.

3. LOCATION, PROPERTY DESCRIPTION, PLATS AND PLANS.

The Condominium subject to this Declaration and the Act is located in Land Lot 49, of the 14th District, Fulton County, Georgia, being more particularly described in Exhibit "A" hereto. A plat of survey relating to the Condominium has been filed in Condominium Plat Book 6, Page 31, of the Fulton County, Georgia records. Floor plans relating to the Condominium have been filed in Condominium File Cabinet No. 2, Folder No. 127, Fulton County, Georgia Records, and Condominium File Cabinet No. 2, Folder No. 127, Fulton County, Georgia Records. The plat of survey and plans are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

4. UNITS AND BOUNDARIES.

Initially, the Condominium consisted of a total of forty-five (45) Residential Units and three (3) Commercial Units. Plans relating to these Units were filed in Condominium File Cabinet No. 2, Folder No. 127, Fulton County records. Pursuant to the First Amendment to the Original Declaration recorded in Deed Book 8919 at page 336, Fulton County records, Unit 301 under the Original Declaration was subdivided into Units 301A and 301B, which have been redesignated by this Declaration as Unit 301 and 302 respectively. Pursuant to this Declaration, certain of the Residential Units are being subdivided and one of the Residential Units is being redesignated to a Commercial Unit so that the Condominium is currently divided into sixty-nine (69) separate Units, consisting of sixty-five (65) Residential Units and four (4) Commercial Units, the Limited Common Elements and the Common Elements. Each Unit consists of a dwelling or commercial area (as applicable) and its appurtenant percentage of undivided interest in the Common Elements as shown on Exhibit "B" attached to this Declaration and incorporated herein by this reference. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the Act and the Condominium Instruments. The Units are depicted on the plats of survey and the Plans. Each Unit includes that part of the structure which lies within the following boundaries:

(a) Vertical Boundaries. The perimetrical or vertical boundaries of each Unit shall be the unfinished interior surface of each wall separating each Unit from another Unit or the Common Elements. As to Units 301, 302, 303, 401, 402, 403, 501, 503, 701, 702, 703, 801, 802, and 803 the vertical boundaries of these Units will include an undivided one-third (1/3) interest in the Large Foyer Space. As to Units 201, 202E, 601, 601E, 901, and 902E the vertical boundaries of these Units will include an undivided one-half (1/2) interest in the Large Foyer Space. Any interest in the Large Foyer Space shall remain undivided, and no Owner or any other Person shall bring any action for partition or division of the whole or any part thereof except as provided in the Act.

(b) Horizontal Boundaries.

(i) The upper horizontal boundary of each Unit is the plane formed by the unfinished interior surface of the ceiling of such Unit, provided that if such Unit is a multiple story Unit, such boundary shall be the unfinished interior surface of the top floor ceiling of such Unit.

(ii) The lower horizontal boundary of each Unit is the plane formed by unfinished interior surface of the floor of such Unit, provided that if such Unit is a multiple story Unit, such boundary shall be the unfinished interior surface of the lowest floor of such Unit.

Exterior doors and exterior glass surfaces such as windows serving a Unit shall be construed to be part of such Unit. If any fireplaces, flues, ducts, conduits, wires, pipes, or any other apparatus lies partially within 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, while any portions thereof serving more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements. Heating and air conditioning systems serving a Unit, such as the compressor and condenser for an air conditioner, and appliances and plumbing fixtures within a Unit shall be construed to be part of the Unit.

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

The ownership of each Unit shall include, and there shall pass with each Unit, whether or not separately described in the conveyance thereof, that percentage of the right, title and interest in the Common Elements attributable to such Unit, together with membership in the Association and an undivided interest in the funds and assets held by the Association, as allocated to the Common Elements.

A description of the location of each Unit, as well as its former (if applicable) and current Unit number, is contained in Exhibit "B" attached hereto.

(c) Conversion of Commercial Units. Each Commercial Unit may be converted to a Residential Unit in accordance with the following provisions:

(i) A Commercial Unit Owner may make a written request to the ACC to convert his Commercial Unit to a Residential Unit. Such written request shall include a written report of an architect licensed to practice in the State of Georgia that the residential use of such Commercial Unit complies in all respects with all applicable laws, ordinances, building codes, rules, and regulations, as well as all use restrictions under this Declaration.

(ii) The ACC shall, within sixty (60) days of receipt of the request for the conversion of a Commercial Unit to a Residential Unit, make a determination of whether the conversion of the Commercial Unit to a Residential Unit complies with the provisions of this Declaration. In the event such conversion does comply with this Declaration, the ACC shall notify all members of the Association of such determination.

(iii) The conversion of a Commercial Unit to a Residential Unit shall be finalized by the amendment of this Declaration in accordance with the provisions of Paragraph 24 hereof. The Commercial Unit Owner requesting the change to a Residential Unit shall bear all expense of preparation and recording of such amendment.

5. COMMON ELEMENTS.

The Common Elements consist of all portions of the Condominium not located within the boundaries of a Unit.

Ownership of the Common Elements shall be by the Unit Owners as tenants-in-common. The percentage of undivided interest in and to the Common Elements attributable to each Unit is set forth in Exhibit "B" hereto. Such percentages may be altered only by an amendment hereto with the consent of all Owners and Mortgagees (or such lesser number as may be prescribed by the Act). Commercial Unit Owners shall have access to the lobby area of the first floor (which has been designated a Limited Common Element appurtenant to the Residential Units) only to the extent such use is required to comply with the Americans with

Disabilities Act and applicable fire and life safety codes or other applicable governmental laws and regulations in effect from time to time, as well as to provide emergency access from the Commercial Units; provided, however, the Commercial Unit Owners shall gain no greater access to the lobby area of the first floor as a result of any relocation of the boundaries of such Commercial Units. Commercial Unit Owners and suppliers of Commercial Unit Owners shall be entitled to use the alley which runs adjacent to the east side of the parking garage for the purpose of loading and unloading vehicles; provided, however, the Commercial Unit Owners and suppliers of Commercial Unit Owners shall be restricted to the use of the Commercial Easement Area (as defined below) only for the purpose of delivering or removing commercial goods or fixtures from the Condominium and except as otherwise provided in this Declaration, no other portions of the Common Elements may be used for such delivery or removal purposes. As used herein "Commercial Easement Area" is the portion of the Condominium so designated on the Plans and which consists of the alley, a four-foot aisle along the southerly portion of the ground level of the parking garage (which widens at the southwest corner of said parking garage to accommodate entry to the commercial space doorways to the building), and the hallways and stairs located in the building and servicing the Commercial Units. Commercial Unit Owners shall prohibit the parking of commercial vehicles in front of the Condominium on Ponce de Leon Avenue or Peachtree Road for any purpose whatsoever except in designated areas as permitted by law.

The Common Elements shall remain undivided, and no Owner or any other Person shall bring any action for partition or division of the whole or any part thereof except as provided in the Act. Except as provided for Limited Common Elements or as otherwise provided herein, each Owner and the Association may use the Common Elements for the purposes for which they are intended, but no such use shall enter or encroach upon the lawful rights of the other Owners.

6. LIMITED COMMON ELEMENTS.

(a) The Limited Common Elements located on the Condominium and the Units to which they are assigned are as described on Exhibit "B" attached hereto.

(b) The Association's Board, without need for a membership vote, is hereby authorized to assign and to reassign Limited Common Elements, provided that any such assignment or reassignment shall be made in accordance with the provisions of Section 44-3-82(b) and (c) of the Act.

7. CONSTRUCTION/RENOVATION OF CERTAIN UNITS.

(a) From time to time, Unit Owners may perform construction to and renovation of their Units, and the Association may perform certain construction to and renovation of portions of the Common Elements and Limited Common Elements. Part of the work which may be performed by the Association is anticipated to include the installation of new chase plumbing supply lines through each Unit, the removal of the existing bathroom in the Large Foyer Space, the installation of a trash chute extending from the eleventh floor of the Condominium to the basement, installation of air conditioning and ventilation equipment in the hallways of floors two through eleven and the rooftop level of the Condominium, installation of electric meters and/or HVAC units on certain breezeways, and installation of a skylight over the main stairwell. In the event the Association installs a trash chute, the Association shall insulate the chute to limit the noise generated by trash passing through the chute to the basement storage area. The Association shall also take such steps as are reasonably necessary to collect such trash in the basement of the building in an orderly fashion and to arrange removal of trash from this basement area on a periodic basis to limit odors generated by such trash.

(b) The new chase plumbing supply lines may be installed adjacent to the

existing chase plumbing through each Unit, and, if so, the Association will enclose the new chase plumbing supply lines and paint the enclosure to match the surrounding wall area in the Unit. Each Owner will be responsible for any additional plumbing work desired by such Owner in his Unit other than the connection of the existing plumbing lines within the Unit from the existing chase plumbing to the new chase plumbing installed by the Association. The Association is given a perpetual easement to install and maintain the chase plumbing through each Unit.

(c) The Association may also from time to time replace other utility lines and building systems. The Association shall not be required to relocate such lines and/or systems in the same location as previously located, and the Association is given a perpetual easement to install and maintain these lines and/or systems if relocated in or through a Unit.

(d) Each Residential Unit Owner is hereby given a temporary non-exclusive easement on, over and through the Common Elements and Limited Common Elements for the purpose of performing any construction and renovation of his Residential Unit. Each Commercial Unit Owner is hereby given a temporary non-exclusive easement on, over and through the Common Elements and the Limited Common Elements located on the first floor and basement of the building only for the purpose of performing any construction and renovation of his Commercial Unit.

(f) The Commercial Unit Owners may place satellite dishes not to exceed 24 inches in diameter and vent hoods, as well as water heaters servicing the Commercial Units on the Common Elements provided (i) the location of such vent hoods, satellite dishes and water heaters has been approved in advance by the ACC in accordance with the terms of Paragraph 14 hereof, and (ii) the placement of such vent hood, satellite dish or water heater complies with all applicable laws, ordinances, rules and regulations, including but not limited to all historical designation guidelines.

(g) Any construction and/or renovation to be completed by any Unit Owner or the Association pursuant to this Section 7 will take place so as to minimize the noise and inconvenience to Owners. Any work that generates excessive levels of noise will take place between the hours of 8:00 a.m. and 6:00 p.m. Monday through Friday, between 9:00 a.m. and 6:00 p.m. on Saturday and between 12:00 p.m. and 6:00 p.m. on Sunday.

8. ASSOCIATION MEMBERSHIP AND ALLOCATION OF VOTES.

All Unit Owners, by virtue of their ownership of a fee or undivided fee interest in any Unit are members of The Ponce Condominium Association, Inc., and, except as otherwise provided herein or in the Bylaws, shall be entitled to vote on all matters upon which Association members are entitled to vote pursuant to the Condominium Instruments. Subject to the provisions of the Condominium Instruments, each Owner shall be entitled to the number of votes shown on Exhibit "B" hereto, which votes shall be appurtenant to such Unit and shall be weighted in accordance with the percentage of undivided interest in the Common Elements attributable to the Unit, as set forth on Exhibit "B" hereto.

9. ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

Except as otherwise provided herein, each Unit is hereby allocated liability for Common Expenses apportioned to the Units in accordance with the percentage of undivided interest in the Common Elements appurtenant to the Unit, as shown on Exhibit "B" hereto.

(a) Except as provided below or elsewhere in the Act or Condominium Instruments, the amount of all Common Expenses shall be assessed against all the Units in accordance with the above allocation of liability for Common Expenses.

(b) The Board shall have the power to assess specially pursuant to this Paragraph and to Section 44-3-80(b) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board to do so shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.

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

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

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

(c) Notwithstanding anything contained herein to the contrary, any Common Expenses which are incurred through or occasioned by the use or enjoyment of any Common Elements which benefits or is intended to benefit less than all the Units, shall not be assessed against all the Units pursuant to this Paragraph 9, but shall be specifically assessed equitably among those Units which are so benefitted or intended to be benefitted.

(d) Units located on the tenth and eleventh floors of the Condominium are not separately metered for electrical consumption. In addition to the share of Common Expenses allocated to Units located on these floors, these Units will be assessed a separate charge for electrical power supplied to such Units, the amount of such charge to be set by the Board in its sole and absolute discretion, but which shall be reasonably related to the actual electrical consumption by these floors. The assessment for electrical power shall be deemed an assessment under the Declaration.

(e) The Commercial Units are not separately metered for natural gas or water consumption. Each Commercial Unit must be separately metered for natural gas and water consumption by the earlier of (i) occupancy of and the conducting of business in such Commercial Unit, or (ii) December 31, 1995. In the event the Commercial Units are not separately metered for natural gas and water consumption in accordance with the provisions of the preceding sentence, the Association may assess each Commercial Unit for an amount for natural gas and water consumed by each Unit, the amount of such charge to be set by the Board in its sole and absolute discretion, but which shall be reasonably related to the actual natural gas and water consumption of each Commercial Unit.

(f) Any Common Expenses associated with any area assigned to a Commercial Unit as a Limited Common Element appurtenant to such Unit shall be assessed against such Unit. To the extent more than one Commercial Unit shares a Limited Common Element, such Common Expenses associated with such Limited Common Element shall be borne equally by such Units.

(g) Any Common Expenses associated with any balcony assigned to a Unit as a Limited Common Element shall be assessed against such Unit. To the extent more than one Unit shares a balcony as a Limited Common Element, such Common Expenses associated with such balcony shall be borne equally by such Units.

(h) Any Common Expenses associated with the parking garage shall be assessed among those Units having been assigned parking spaces in the parking garage as Limited Common Elements in proportion to the number of parking spaces assigned as Limited Common Elements to each Unit to the total number of parking spaces assigned as Limited Common Elements to all Units. For the purpose of this subparagraph and the allocation of maintenance expenses, any unassigned parking spaces shall be treated as Limited Common Elements appurtenant to the Residential Units.

(i) Any Common Expenses associated with Limited Common Elements assigned to the Residential Units as a group shall be assessed against the Residential Units, each such Residential Unit being liable for that portion of such Common Expenses determined by multiplying the total of such Common Expenses by a fraction, the numerator of which shall be such Unit's allocated liability for Common Expenses as shown on Exhibit "B" hereto and the denominator of which shall be the total of all Residential Units' allocated liability for Common Expenses as shown on Exhibit "B" hereto.

(j) Notwithstanding anything contained herein to the contrary, only expenses limited to water penetration maintenance of the roof shall be deemed a Common Expense shared by all Unit Owners. All other expenses related to the roof shall be borne by the Residential Unit Owners.

(k) Notwithstanding anything contained herein to the contrary, only expenses relating to structural repairs of the front porch area (which are Limited Common Elements appurtenant to certain Commercial Units) shall be deemed a Common Expense shared by all Unit Owners. All other expenses related to the front porch areas shall be borne by those Commercial Units to which they are assigned as Limited Common Elements.

10. ASSOCIATION RIGHTS AND RESTRICTIONS.

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

(a) in accordance with Section 44-3-105 of the Act, and as otherwise provided herein, to enter any portion of the Condominium for maintenance, emergency or safety purposes, or otherwise to discharge its powers or responsibilities hereunder, which right may be exercised by the Association's Board, officers, agents, employees or managers. Except in an emergency situation, entry into Units shall be only during reasonable hours and after reasonable notice to the Unit Owner or Occupant;

(b) to make and to enforce reasonable rules and regulations governing the use of the Condominium, including the Units, Limited Common Elements, and Common Elements;

(c) to enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by the imposition of reasonable monetary fines and suspension of use and voting privileges as provided in Section 44-3-76 of the Act, as amended (which shall not be construed as limiting any other legal means of enforcement);

(d) to grant permits, licenses, utility easements, and other easements;

(e) to control, manage, operate, maintain, improve and replace all portions of the Area of Common Responsibility;

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

(g) to represent the Owners in dealing with governmental entities with respect to the Area of Common Responsibility;

(h) to close permanently or temporarily any portion of the Common Elements (including the parking garage) with forty-five (45) days prior notice to all Owners, except that, in emergency situations requiring a temporary closing, prior notice shall not be required so long as notice is given within three (3) days after the closing explaining the reason for the closing; provided, however, any closing of the Common Elements shall be undertaken to minimize the disruption of the operation of the Commercial Units and so that the Commercial Unit Owners have access to their Units during the normal business hours of the Occupants of such Units. Notwithstanding the above, the Owners may re-open closed Common Elements by a majority vote of the total Association vote, cast at a duly called special or annual meeting;

(i) to require each Owner to install separate utility meters for each Owner's Unit at the Owner's cost, or to install such meters and assess the costs thereof against each Unit as provided herein; and

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

11. ASSESSMENTS.

(a) Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants as may be more specifically authorized by the Board.

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

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted by the Act, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board; unless otherwise provided, the annual assessments shall be paid in equal monthly installments due on the first day of each calendar month. No Owner may exempt himself or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Elements, the Association's failure to perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties. The lien provided for herein shall have priority as provided in the Act.

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

(i) If any monthly installment of annual assessments or any part thereof is not paid in full by the tenth (10th) day of the month or if any other

charge is not paid within ten (10) days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner, and interest at the rate of ten (10%) percent per annum or such higher rate as may be permitted by the Act shall accrue from the due date.

If partial payment of assessments and related charges is made, the amount received may be applied first to costs and attorney's fees, then, to: (1) in order, late charges, interest, delinquent assessments, and current assessments which are not the subject matter of a lawsuit, and then (2), in order, to late charges, interest, delinquent assessments, and current assessments which are the subject matter of a lawsuit.

(ii) If assessments, fines or other charges or any part thereof due from an Owner remain delinquent and unpaid for more than fifteen (15) days from the date due, then the Board may accelerate and declare immediately due all of that Owner's or Unit's unpaid installments of the annual assessment and of any special assessment not less than ten (10) days after the date of written notice to the Owner. Upon acceleration, that Owner shall lose the privilege of paying the annual assessment in monthly installments for that fiscal year.

(iii) If assessments and other charges or any part thereof remain unpaid more than thirty (30) days after they become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law and suspend the Owner's and/or Occupant's right to use the Common Elements, including the right to bring or park vehicles on the Common Elements or have guests bring or park vehicles on the Common Elements or Limited Common Elements (provided, however, the Board may not limit pedestrian, medical, fire, police or other health, safety, service or emergency vehicle ingress or egress to or from the Unit). Prior to suspending parking privileges, the Association shall provide the delinquent Owner or Occupant written notice of its intention to do so, sent by certified mail not less than ten (10) days prior to the date of such suspension.

(iv) If any assessment or other charge is delinquent for thirty (30) days or more, in addition to all other rights provided in the Act and herein, the Association shall have the right upon ten (10) days written notice, and in compliance with any requirements set forth in the Act, to suspend any utility services, the cost of which are an Association Common Expense, including, but not limited to, water, electricity, heat, natural gas, air conditioning and cable television, to that Unit until such time as the delinquent assessments and all costs permitted under this Paragraph, including reasonable attorney's fees, are paid in full. Any costs incurred by the Association in discontinuing and/or reconnecting any utility service, including reasonable attorney's fees, shall be an assessment against the Unit.

Notwithstanding the above, the Board only may suspend water, electricity, heat or air conditioning service paid for as a Common Expense after a final judgment or judgments in excess of a total of \$750.00, or such other amount as required by the Act, are obtained in favor of the Association from a court of competent jurisdiction, the Association provides the notice required to be provided by the institutional provider of such service prior to suspension of such service, and the Association complies with any other requirements of Section 44-3-76 of the Act. The utility services shall not be required to be restored until the judgment or judgments are paid in full, at which time the Association shall direct the utility provider to restore the service.

(d) Computation of Operating Budget and Assessment. At least thirty (30) days prior to the beginning of the Association's fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Condominium during the coming year. The Board shall cause the budget and notice of the assessments

to be levied against each Unit for the following year to be delivered to each member at least twenty-one (21) days prior to the Association's annual meeting. The budget and the assessment shall become effective unless disapproved at a duly called and constituted annual Association meeting by a vote of a majority of the total Association membership; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

If the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then, until a budget is determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. In such case, the Board may propose a new budget at any time during the year at a special Association meeting. The proposed budget and assessment shall be delivered to the members at least thirty (30) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to budgets considered at special meetings.

(e) Special Assessments. In addition to the annual assessment provided for in subparagraph (b) above, the Board may at any time levy a special assessment against all Owners, notice of which shall be sent to all Owners. Any special assessment which would cause the average total of special assessments levied in one fiscal year to exceed two hundred (\$200.00) dollars per Unit shall be approved by a Majority of the Owners prior to becoming effective (except as provided in Paragraph 9(b) regarding the power to assess specially pursuant to Section 44-3-80(b) of the Act and Paragraph 13(b) herein, regarding repair or reconstruction of casualty damage to or destruction of all or part of the Condominium).

(f) Capital Budget and Contribution. The Board may prepare an annual capital budget or evaluation which takes into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the Association's projected capital needs both as to amount and timing by equal annual assessments over the period of the budget. Any required capital contribution shall be included within the budget and assessment as provided in subparagraph (d) of this Paragraph.

(g) Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Unit. The Association shall respond in writing within five (5) days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars or such higher amount authorized by the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Unit as of the date specified therein.

(h) Surplus Funds and Common Profits. Pursuant to Section 44-3-108 of the Act, common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining thereafter shall, at the Board's option, either be distributed to the Owners or credited to the Owners' next chargeable assessment in proportion to the liability for Common Expenses attributable to each Unit, or added to the Association's reserve account.

12. INSURANCE.

The Association shall obtain and maintain at all times, as a Common Expense, insurance as required by Section 44-3-107 of the Act, as amended, and

as required herein. To the extent reasonably available at reasonable cost, the Association's insurance policy shall cover any of the following types of property contained within a Unit, regardless of ownership: (a) fixtures, improvements and alterations that are a part of the building or structure; and (b) appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping. If such insurance is not reasonably available, the Association's insurance policy may exclude improvements and betterments made by the Unit Owner and may exclude the finished surfaces of perimeter and partition walls, floors, and ceilings within the Units (i.e., paint, wallpaper, paneling, other wall covering, tile, carpet and any floor covering; provided, however, floor covering does not mean unfinished hardwood or unfinished parquet flooring).

All insurance purchased by the Association pursuant to this Paragraph shall run to the benefit of the Association, the Board, officers, all agents and employees of the Association, the Unit Owners, and their respective Mortgagees, and all other persons entitled to occupy any Unit, as their interests may appear. The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property. The Association's insurance shall not include the Unit Owners' personal property unless the Association advises the Unit Owners of such coverage in writing.

The Board shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs, and each Owner shall have the right to obtain additional coverage at his or her own expense.

All Association insurance coverage shall be written in the name of the Association as trustee for itself, each of the Owners, and the Mortgagees, if any. At least every two (2) years the Board shall conduct an insurance review to determine if the policy in force is adequate to meet the Association's needs and to satisfy Section 44-3-107 of the Act. Such responsibility shall be deemed reasonably performed by the Board requesting the Association's insurance agent to so verify.

(a) The Board shall utilize reasonable efforts to secure a blanket hazard insurance policy providing "all risk" coverage in an amount equal to full replacement cost, before application of deductibles, of all improvements located on the Condominium property. If "all risk" coverage is not reasonably available at reasonable cost, the Board shall obtain, at a minimum, fire and extended coverage, including coverage for vandalism and malicious mischief, in like amounts. The Board shall use reasonable efforts to obtain policies that will provide the following:

(i) the insurer waives its rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners, Occupants, and their respective household members;

(ii) any "other insurance" clause contained in the master policy shall expressly exclude individual Owners' or tenant's policies from its operation;

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

(iv) the master policy may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days prior notice in

writing to the Board and all Mortgagees of Units;

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

(vi) the deductible amount per occurrence for coverage required by the Act shall not exceed an amount set by the Board.

(b) All policies of insurance shall be written with a company licensed to do business in the State of Georgia. The company shall provide insurance certificates to each Owner and each Mortgagee upon request.

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

(d) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees. Each Owner shall notify the Board of all structural improvements made by the Owner to his or her Unit. Any Owner who obtains an individual insurance policy covering any portion of the Condominium, other than improvements and betterments made by such Owner at his or her expense and personal property belonging to such Owner, shall file a copy of such individual policy or policies with the Board within thirty (30) days after the purchase of such insurance. Such Owner shall also promptly notify the Board in writing in the event such policy is canceled.

(e) In addition to the insurance required above, the Board shall obtain as a Common Expense:

(i) worker's compensation insurance if and to the extent necessary to meet the requirements of law;

(ii) public liability insurance in amounts not less than required by Section 44-3-107 of the Act, as amended, and officers' and directors' liability insurance in such amounts as the Board may determine. The public liability insurance shall contain a cross liability endorsement;

(iii) fidelity bonds, if reasonably available, covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds. Such bonds, if reasonably available, shall be in an amount consonant with the best business judgment of the Board, but in no event less than three (3) month's assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on the implementation of financial controls which take one or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two members of the Board must sign any checks written on the reserve account; and

(iv) such other insurance as the Board may determine to be necessary.

(f) Insurance carried by the Association as a Common Expense shall not be required to include any part of a Unit which is not depicted on the Plans, nor

shall the Association include public liability insurance for individual Owners for liability arising within the Unit.

(g) Nothing contained herein gives any Owner or other party a priority over any rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Unit on which there is a Mortgagee endorsement shall be disbursed jointly to such Unit Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee.

(h) Every Owner shall be obligated to obtain and maintain at all times insurance covering those portions of his or her Unit to the extent not insured by policies maintained by the Association. Upon request by the Board, the Owner shall furnish a copy of such insurance policy or policies to the Association. In the event that any Owner fails to obtain insurance as required hereunder, the Association may purchase such insurance on behalf of the Owner and assess the cost thereof to the Owner.

(i) Insurance Deductibles. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected Owner's portion of the total cost of repair or otherwise as the Board determines equitable. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Unit Owner shall be responsible for paying any deductible pertaining to his or her Unit. If any Owner fails to pay the deductible when required hereunder, then the Association may pay the deductible and assess the cost to the Owner pursuant to Paragraph 9 hereof; provided, however, where the deductible is for insurance required under the Act, no Owner shall be assigned more than one thousand (\$1,000.00) dollars, or such higher amount as authorized by the Act, as the cost of the deductible for any one occurrence.

13. REPAIR AND RECONSTRUCTION.

In the event of damage to or destruction of all or any part of the Condominium as a result of fire or other casualty, unless eighty (80%) percent of the Owners, including the Owner(s) of any damaged Unit(s), vote not to proceed with the reconstruction and repair of the structure, the Board or its agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Owner with respect to the distribution of proceeds to any such Unit.

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

(b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the additional costs shall be assessed against the Owners of the Unit(s) damaged in proportion to the damage to the Units or against all Owners, in the case of insufficient funds to cover damage to the

Common Elements. This assessment shall not be considered a special assessment as discussed in Paragraph 11(e). If there are surplus funds after repair and reconstruction is completed, such funds shall be common funds of the Association to be used as directed by the Board.

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

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

(e) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair as set forth in this Paragraph to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board.

14. ARCHITECTURAL CONTROLS.

(a) Architectural Standards. Except as provided herein, no Owner, Occupant, or any other person may make any encroachment onto the Common Elements or Limited Common Elements, or make any exterior change, alteration, or construction (including painting and landscaping), nor erect, place or post any object, sign, antenna, clothesline, playground equipment, light (except for reasonable seasonal decorative lights displayed between Thanksgiving and January 15), storm door or window, door knob or knocker, artificial vegetation, exterior sculpture, fountains, flags, or thing on the exterior of the buildings, in any windows, on any Limited Common Elements, or on any other Common Elements, nor make any alterations to the Common Elements or Limited Common Elements without first obtaining the written approval of the Architectural Control Committee. The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing buildings, Units and structures, and the location in relation to surrounding structures and topography. Notwithstanding the foregoing, the Association may erect, construct, and maintain antennas and grant licenses and/or easements to others for the erection, construction, maintenance of such items on any Common Elements.

Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ACC may reasonably require. The ACC or its designated representative shall be the sole arbiter of such application and may withhold approval in its reasonable discretion, including purely aesthetic considerations, and it shall be entitled to stop any construction which is not in conformance with approved plans. The Board or the ACC may publish written architectural standards for exterior and Common Element alterations or additions, and any request in substantial compliance therewith shall be approved; provided, however, each such requested change shall be in harmony with the external design of the existing building and Units and the location in relation to surrounding structures and topography of the vicinity. The ACC or the Board may allow such encroachments on the Common Elements and

Limited Common Elements as it deems acceptable in its reasonable discretion.

In the event that the ACC or its designated representative fails to approve or to disapprove such application within forty-five (45) days after the application and all information as the ACC may reasonably require have been submitted, its approval will not be required and this subparagraph (a) will be deemed complied with; provided, however, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the Bylaws, or the rules and regulations.

(b) Architectural Control Committee. The ACC shall constitute a standing committee of the Association and shall consist of the Board unless the Board delegates to other Owners the authority to serve on the ACC. The Board may do so by resolution, or the Board may call for a special Association election to select the Owners to serve on the ACC. At all times, however, the chairperson of the ACC shall be a Board member. The Board shall at all times have the power to appoint and remove members of the ACC in its sole and absolute discretion.

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

(d) Limitation of Liability. Review and approval of any application hereunder may be made on any reasonable basis, including solely the basis of aesthetic considerations only, and neither the Board nor the ACC shall bear any responsibility for ensuring the design quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. Neither the Association, the Board, the ACC, or member thereof shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

(e) No Waiver of Future Approvals. Each Owner acknowledges that the Board and ACC members will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. Board or ACC approval hereunder shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(f) Enforcement. Any construction, alteration, or other work done in violation of this Paragraph shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to do so, the Board or its designees shall have the right to enter the Unit and do so. All costs thereof, including reasonable attorney's fees, shall be an assessment and lien against such Unit.

In addition, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its or the ACC's decisions.

If any Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Elements in violation

hereof, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction remain on the Common Elements without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction.

15. USE RESTRICTIONS.

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

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

(a) Use of Units.

(i) Residential Units. Each Residential Unit shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Residential Unit or any part of the Condominium other than a Commercial Unit, including business uses ancillary to a primary residential use, except that the Residential Unit Owner or Occupant residing in a Residential Unit may conduct such ancillary business activities within the Residential 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 Residential Unit; (b) the business activity does not involve visitation of the Residential Unit by employees, clients, customers, suppliers or other business invitees; (c) the business activity conforms to all zoning requirements for the Condominium; (d) the business activity does not increase traffic in the Condominium (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services); (e) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage; (f) the business activity is consistent with the residential character of the residential portion of the Condominium and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium, as may be determined in the sole discretion of the Board; and (g) the business activity does not result in a materially greater use of the Common Elements, Limited Common Elements appurtenant to all Residential Units or Association services.

The terms "business" and "trade," as used herein, shall have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the use of a Unit by an on-site management agent operating on behalf of the Association shall not be considered a trade or business within the meaning of this subparagraph.

(ii) Commercial Units. Each Commercial Unit shall be used only for such commercial or business purposes permitted by applicable zoning ordinances and use restrictions, provided such commercial or business activity does not constitute a nuisance or hazardous or offensive use, or threatens the security

or safety of other residents of the Condominium, as may be determined in the reasonable discretion of the Board. Notwithstanding the foregoing, no Commercial Unit shall be used for any of the following uses: discotheque, cinema/movie theater, bowling alley, skating rink, amusement gallery, pool hall, gymnasium, massage parlor, adult book store or adult video store, business which sells pornographic material, video game room, car wash, industrial or manufacturing use, auto, boat or trailer sales, gas station or amusement arcade.

(iii) Number of Occupants. No Residential Unit shall be occupied by more than two persons per bedroom in the Residential Unit (as such bedrooms are depicted on the Plans of such Unit filed in the Fulton County, Georgia records) plus one (1) additional person. "Occupancy," for purposes of this Paragraph, shall be defined as staying overnight in a Unit for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any year. This single family occupancy restriction shall not apply to require the removal of any person lawfully occupying a Residential Unit on the Effective Date hereof.

(iv) Arbitration. Any dispute regarding the use of any Unit shall be resolved by arbitration in accordance with the following provisions. Any Unit Owner desiring to submit to arbitration any dispute with the Board concerning use of a Unit shall give written notice to the Board of (i) a description of the dispute to be submitted to arbitration, and (ii) the name of the first of three arbitrators. Within ten (10) days after such notice, the Board shall give written notice to the Unit Owner of the second of the three arbitrators. If the Board fails to name a second arbitrator with such ten-day time period, then such second arbitrator shall be appointed by the first arbitrator. The first and second arbitrators shall meet within five (5) days after the naming of the second arbitrator to name a third arbitrator. In the event the first and second arbitrators cannot agree upon the name of the third arbitrator within ten (10) days after the naming of the second arbitrator, then the first arbitrator and the second arbitrator shall make joint application to the senior Judge of the Superior Court of Fulton County, Georgia for the naming of a third arbitrator. These three arbitrators so named shall constitute the board of arbitrators for the arbitration of the matter in dispute. All meeting of the arbitrators shall be held in Atlanta, Georgia, or such other place as shall be approved by the Board and the Unit Owner. The proceedings of the arbitrators shall be governed by the Commercial Arbitration Rules of the American Arbitration Association (as amended), to the extent that such Commercial Arbitration Rules are not inconsistent with the provisions of this Declaration and with the laws of the State of Georgia. In the event of a conflict, then the provisions of this Declaration and the laws of the State of Georgia shall govern and control such board of arbitrators and the arbitration of the matter in dispute. The board of arbitrators shall meet as soon as possible to resolve the dispute. The Board and the Unit Owner may appear at such meeting of the board of arbitrators to present evidence and make arguments. The board of arbitrators shall render a decision within fifteen (15) days of its meeting, which decision shall be final and binding upon the Board and the Unit Owner.

(b) Alteration of Units. Subject to the other provisions of this Declaration, Unit Owners may make alterations to the interiors of their Units, relocate the boundaries between adjoining Units, and subdivide their Units as follows:

(i) Alterations to the Interiors of the Units. Any Unit Owner may make any improvements or alterations to the interior of his Unit that are not of a structural nature and do not impair the structural integrity of any structure or otherwise lessen the support of any portion of the Condominium; provided, however, all plumbing and electrical work shall be done by licensed plumbing and electrical contractors, respectively, and the plans and specifications for all such work shall be subject to the prior written approval of the Board, or the Architectural Control Committee, before commencement of any such work, which prior written approval may be withheld in the case of any plumbing work if the

Unit Owner requesting such approval does not agree to the replacement of any lateral plumbing fixtures affected by the work which the Board (or the Architectural Control Committee, if applicable) in its sole discretion determines is necessary; provided further, however, the Unit Owners with an undivided interest in the Large Foyer Space shall not alter any interior wall located in the Large Foyer Space except with the express written approval of the ACC and all other owners of such Large Foyer Space.

(ii) Relocation of Boundaries. Boundaries between adjoining Units may be relocated only in strict accordance with the provisions of O.C.G.A. § 44-3-91; provided, however, no Residential Unit may be reduced in size to less than the number of square feet required by any applicable city ordinance or code and each Unit must contain at least one (1) bathroom.

(iii) Subdivision of Units. An Owner may subdivide his Unit only in strict accordance with the provisions of Section 44-3-92 of the Act and this Declaration; provided, however, no Residential Unit may be created or reduced to a size which contains less than the number of square feet required by any applicable city ordinance or code, each Residential Unit must contain at least one (1) bathroom, and no entryways to a Residential Unit may be created in the lobby areas on each floor which are in front of the main staircase. If an Owner subdivides a Unit, he shall have the option of installing an electrical meter for each resulting Unit or having the Association be billed by the supplier of electrical power, and the Association shall prorate the bill based upon the square footage of each Unit under the common meter and bill each Owner as a special assessment as provided in this Declaration.

(c) Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Elements without prior written Board consent, except as specifically provided herein.

With prior written Board approval, and subject to any restrictions imposed by the Board, an Owner may reserve portions of the Common Elements for use for a period of time as set by the Board. Any such Owner who reserves a portion of the Common Elements as provided herein shall assume, on behalf of himself or herself and his or her guests, Occupants and family, all risks associated with the use of the Common Elements and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees. The Board may charge such sums as it deems appropriate in its sole and absolute discretion for the use of the Common Elements by an Owner.

(d) Use of Limited Common Elements. Use of the Limited Common Elements is restricted exclusively to the Owner(s) of the Unit(s) to which such Limited Common Elements are assigned, and said Owner's family members, guests, tenants and invitees. The Limited Common Elements are reserved for exclusive use, but shall not be construed or interpreted to be separate and apart from the Common Elements in general, and the restrictions applicable to the Common Elements in Paragraph 15(c) shall also apply to the Limited Common Elements. Notwithstanding the provisions of Paragraph 14, appropriate outdoor items, such as patio furniture, may be kept on the patio or balcony serving a Residential Unit only if approved in advance by the ACC.

(e) Prohibition of Damage, Nuisance and Noise. Without prior written Board consent, nothing shall be done or kept on the Condominium which would increase the rate of insurance on the Condominium or any Unit, which would be in violation of any statute, rule, ordinance, regulation, permit or other governmental requirements, or which would increase the Common Expenses. Notwithstanding the foregoing, nothing contained in this Paragraph 15(e) shall prohibit the use of a Commercial Unit in accordance with the provisions of

Paragraph 15(a)(ii), provided the Association shall assess the Commercial Unit Owner whose use of a Commercial Unit increase the Common Expenses for all increases in the Common Expenses caused by such use by a Commercial Unit Owner.

Noxious, destructive or offensive activity shall not be carried on upon the Condominium. No Unit Owner or Occupant may use or allow the use of the Unit or any portion of the Condominium at any time, in any way or for any purpose which may endanger the health, unreasonably annoy or disturb or cause embarrassment, or discomfort to other Owners or Occupants, or in such a way as to constitute, in the Board's reasonable opinion, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights. No Residential Unit Owner or Occupant may use or allow the use of the Residential Unit, the Common Elements or the Limited Common Elements in any manner which creates noises between the hours of 11:00 p.m. and 7:30 a.m. which can be heard by persons in another Unit that will, in the Board's reasonable discretion, unreasonably interfere with the rights, comfort or convenience of any other Owner or Occupant.

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

No damage to or waste of the Common Elements, or any part thereof, shall be permitted by any Owner or family member or invitee of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees, or Occupants of his or her Unit.

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

(g) Pets. No Owner or Occupant may keep any pets other than generally recognized household pets on any portion of the Condominium, and no Owner or Occupant may keep more than two (2) generally recognized household pets per Unit; provided, however, that this requirement shall not apply to an Owner or Occupant that has more than two (2) pets on the Effective Date hereof. Any Owner or Occupant permitted to keep more than two (2) pets hereunder may not replace pets that die or are otherwise removed from the Condominium until the number of pets kept in such Unit is two (2) or less. Notwithstanding the above, a reasonable number of generally recognized household pets, as determined in the Board's sole discretion, weighing less than two (2) pounds each may be kept in Units.

No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors or kept unattended outdoors in fenced areas, including fenced porch or patio areas. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Elements, including Limited Common Elements, without prior written ACC approval. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors. Feces left upon the Common Elements by pets must be removed by the owner of the pet or the Person

responsible for the pet.

No potbellied pigs may be brought onto or kept at the Condominium at any time. No pit bulldogs, other dogs or other animal determined in the Board's sole discretion to be dangerous may be brought onto or kept on the Condominium at any time. Any pet which endangers the health of any Owner or Occupant or which creates a nuisance or unreasonable disturbance, as may be determined in the Board's sole discretion, must be permanently removed from the Condominium upon seven (7) days' written notice by the Board. If the Owner or Occupant fails to do so, the Board may remove the pet. Any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any community member may be removed by the Board without prior notice to the pet's owner.

Any Owner or Occupant who keeps or maintains any pet upon the Condominium shall be deemed to have indemnified and agreed to hold the Association, its directors, officers, and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Condominium.

(h) Parking Garage. The parking garage located on the Condominium is part of the Common Elements. The Association may assign parking spaces to Residential Units as a Limited Common Element appurtenant to such Unit. One (1) covered parking space is hereby assigned to Commercial Unit 1 as a Limited Common Element, one (1) covered parking space is hereby assigned to Commercial Unit 100 as a Limited Common Element appurtenant to such Unit and one (1) uncovered parking space is hereby assigned to Commercial Unit 101 as a Limited Common Element appurtenant to such Unit. The assignment or reassignment of parking spaces within the parking garage will be made by the Association in accordance with Section 6 of this Declaration. The Association may expand the parking garage, the expense of such expansion to be deemed a Common Expense of the Condominium. In the event the Association does expand the parking garage, the Association may deem the additional parking spaces to be Limited Common Elements appurtenant to certain Residential and/or Commercial Units, the decision of the Association to be in its sole and absolute discretion.

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

For purposes hereof, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Condominium for fourteen (14) consecutive days or longer without prior written Board permission.

If any vehicle is parked on any portion of the Condominium in violation hereof or in violation of the Association's rules, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the parking garage stating the

name and telephone number of the person or entity which will do the towing. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

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

(i) Abandoned Personal Property. Personal property, other than an automobile as provided for in Paragraph 15(h), is prohibited from being stored, kept, or allowed to remain for more than twenty-four (24) hours upon any portion of the Common Elements, other than on a Limited Common Element, without prior written Board permission. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property and/or on the front door of the property owner's Unit, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

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

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

(j) Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to the Condominium, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" position and at a minimum temperature setting of fifty-five (55°) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two (32°) degrees Fahrenheit or below. Owners and Occupants of Units shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. If during the months specified above the heating equipment is not working properly, the Owner or Occupant shall immediately inform the Board of this failure of the equipment and of the time needed to repair the equipment. The Board may fine any Owner or Occupant and/or cause the water service to the violator's Unit to be discontinued for violation hereof, in addition to any other remedies of the Association.

(k) Signs. Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected, placed, or permitted to remain on the Condominium without the prior written consent of the Board or its designee, except that one (1) professional security sign not to

exceed six (6") inches by six (6") inches in size may be displayed from within a Unit, and one (1) professionally lettered "For Rent" or "For Sale" sign not to exceed two (2') feet by two (2') feet in size may be displayed from within a Unit being offered for sale or for lease. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association on the Common Elements. The Board may permit signs in the lobby area and on the exterior of the Condominium during the Olympic Leasing Period and during the Construction/Renovation Phase in its sole and absolute discretion. The Board shall not unreasonably withhold, condition or delay its consent to signs, decorations, lettering, advertising posters or billboards located in the Commercial Units, taking into consideration the intended use of the Commercial Unit and considering the aesthetics, materials for such sign, harmony with the external design of the building and location in relation to surrounding structures. Any sign, advertising poster, or billboard erected, placed, or permitted to remain on the Condominium shall comply with all applicable laws, ordinances, rules, and regulations, including but not limited to all historical designation guidelines.

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

(m) Unightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Condominium. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Unit. Only appropriate outdoor items, such as patio furniture, may be kept on the porch, patio or balcony serving the Unit.

(n) Garage Sales. Garage sales, yard sales, flea markets, or similar activities shall be permitted at the Condominium only with prior written Board consent and subject to all reasonable conditions that the Board may impose.

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

(p) Replacing Carpet with Tile or Hardwood Floors. No Owner, Occupant, or any other person may replace carpeting with a tile, marble, vinyl or hardwood floor, or other hard surfaced flooring material, on the interior of a Residential Unit without first obtaining written approval of the Board. To obtain Board approval, the person seeking to make the change must demonstrate that such replacement will not cause noise to any Unit below which will exceed the average noise level in Units below Units with carpeted floors.

(q) Transient Tenants. Except for transient tenants or Occupants permitted during the Olympic Leasing Period pursuant to Paragraph 16(e) below, no transient tenants or Occupants shall be accommodated in a Unit.

(r) Elevators. Elevators No. 1 and No. 3 (as designated on the Plans) are Common Elements. The use of Elevator No. 1 by the Commercial Units shall be limited to (i) providing handicap access to Units 100, 101 and 102; and (ii) providing freight elevator service for the Commercial Units between the basement and floor one of the building when Elevator No. 3 is out of service. No Commercial Unit Owner, Occupant of a Commercial Unit, or invitee or guest of a Commercial Unit Owner or Occupant of a Commercial Unit shall have any right to

use any elevator except between floor one and the basement. The use of Elevator No. 2 (as designated on the Plans) shall be limited exclusively to the Association and those persons to whom the Association has given express permission in connection with special occasions or special uses. Except as expressly provided herein, no Commercial Unit Owners or suppliers of the Commercial Unit Owners shall be entitled to use any of the elevators located on the Condominium. The Association may permit Residential Unit Owners, as well as the Association in connection with any maintenance, repair, improvement or reconstruction of the Common Elements or any Limited Common Elements, to use an elevator on an exclusive basis on a temporary basis; provided, however, at least one (1) elevator shall be available at all times to Residential Unit Owners for passenger service.

(s) Fireplaces. Unit Owners are expressly prohibited from starting any fires in any fireplace in the Condominium. No fireplace insert may be installed in any fireplace except (i) if approved in writing by the ACC, and (ii) such insert does not burn any material or fuel.

16. LEASING.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Paragraph.

(a) Definition. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person(s) other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. For purposes hereof, occupancy of a Residential Unit by a roommate of an Owner Occupant shall not constitute leasing.

(b) Residential Unit Leasing Provisions. Leasing of Residential Units shall be governed by the following provisions:

(i) General. Residential Units may be leased only in their entirety; no fraction or portion 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. The Board may maintain and, upon request, provide a form which is deemed acceptable. There shall be no subleasing of Residential Units or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than six (6) months, 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 Residential Unit, the Residential Unit Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Residential Unit. The Residential Unit Owner must provide the lessee copies of the Declaration, Bylaws, 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.

(ii) Compliance With Declaration, Bylaws, and Rules and Regulations, Use of Common Elements, and Liability for Assessments. Each Residential Unit Owner and each lessee, by occupancy of a Residential Unit, covenants and agrees that any lease for a Residential Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Residential Unit:

(A) Compliance With Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto and shall control the

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

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

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

(C) Liability for Assessments. When a Residential Unit Owner who is leasing his or her Residential Unit fails to pay any annual or special assessment or any other charge for a period of more than forty-five (45) days after it is due and payable, then the delinquent Residential Unit Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, after notice to the Residential Unit Owner in accordance with the provisions of the Bylaws, 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 the Residential Unit Owner fails to comply herewith, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were a Residential Unit Owner. The above provision shall not be construed to release the Residential Unit Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible. Any excess paid by lessee to the Association over the amount due from such Residential Unit Owner to the Association shall be paid over by the Association to such Residential Unit Owner.

(c) Commercial Unit Leasing Provisions. Leasing of Commercial Units shall be governed by the following provisions:

(i) General. Within ten (10) days after lessee takes possession of a Commercial Unit under a lease, the Commercial Unit Owner shall provide the

Board with written notice of the name and address of the lessee, the intended use of the Commercial Unit and the term of such lease. The Commercial Unit Owner must provide the lessee copies of the Declaration, Bylaws, 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.

(ii) Compliance With Declaration, Bylaws, and Rules and Regulations, Use of Common Elements, and Liability for Assessments. Each Commercial Unit Owner and each lessee, by occupancy of a Commercial Unit, covenants and agrees that any lease for a Commercial Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Commercial Unit:

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

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

(B) Use of Common Elements. The Commercial Unit Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Commercial Unit Owner has to use the Common Elements, including, but not limited to, the use of any and all recreational facilities. Lessees of Commercial Units shall have the same restrictions on the use of the Common Elements as the Owners of the Commercial Units set forth herein.

(C) Liability for Assessments. When a Commercial Unit Owner who is leasing his or her Commercial Unit fails to pay any annual or special assessment or any other charge for a period of more than forty-five (45) days after it is due and payable, then the delinquent Commercial Unit Owner hereby consents to the assignment of any rent received from the lessee during the period

of delinquency, and, upon request by the Board, after notice to the Commercial Unit Owner in accordance with the provisions of the Bylaws 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 the Commercial Unit Owner fails to comply herewith, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were a Commercial Unit Owner. The above provision shall not be construed to release the Commercial Unit Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible. Any excess paid by lessee to the Association over the amount due from such Commercial Unit Owner shall be paid over by the Association to such Commercial Unit Owner.

(d) Applicability of this Paragraph 16. Leases existing on the Effective Date of this Declaration shall not be subject to the terms of subparagraph (b) above. Such leases may continue in accordance with the terms of the Original Declaration. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with this Paragraph. Any Owner of a Unit which is leased on the Effective Date of this Declaration shall file with the Board a copy of the lease agreement in effect within thirty (30) days of the Effective Date hereof.

This Paragraph 16 shall not apply to any leasing transaction entered into by the holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

(e) Leasing of Units during the 1996 Olympic Games in Atlanta. Notwithstanding anything to the contrary in Paragraph 16 herein, limited short term leasing of Residential Units will be permitted at the Condominium during the 1996 Olympic Games, subject to the provisions of this subparagraph (e). Olympic short term leasing is permitted from April 1, 1996 through September 15, 1996 (the "Olympic Leasing Period"). Except during this approved Olympic Leasing Period, no leases shall be less than that term as provided in Paragraph 16.

Any Residential Unit Owner intending to lease his or her Residential Unit during the approved Olympic Leasing Period shall notify the Association in writing of his or her intention to do so at least thirty (30) days prior to the commencement of the lease. Additionally, at least thirty (30) days prior to the commencement of the lease, the Residential Unit Owner shall provide the Board:

(i) a copy of an executed lease, on a form approved by the Board in accordance with Sections 16(a) and (b) hereof,

(ii) a security deposit in the amount of \$500.00, which will be refunded after September 15, 1996 or applied to the cost of any cleaning or repair to the common elements caused by the Residential Unit Owner's tenants, and

(iii) an administrative fee in an amount to be determined by the Board for administrative and other costs likely to be incurred by the Association in monitoring Olympic leasing at the Condominium, not to exceed \$50.00 per Residential Unit per lease; provided, the administrative fee shall be equal among all Residential Units participating in Olympic leasing.

Leasing of a Residential Unit which is approved during the Olympic Leasing Period shall be subject to the following limitations, restrictions and

requirements:

(1) In accordance with the terms hereof, the Residential Unit Owner is authorized to lease his or her Residential Unit or a portion thereof during the Olympic Leasing Period either to a person or entity who intends to occupy the Residential Unit during the Olympic Leasing Period, or to a rental agent or other person or entity who intends to sublease the Residential Unit during the Olympic Leasing Period for occupancy by others. However, any such sublease authorized hereunder shall comply with all of the terms hereof, and the Residential Unit Owner must provide the Association copies of both the lease and sublease agreements.

(2) The lease term of an approved lease during the Olympic Leasing Period shall not be less than one (1) week, and shall not commence prior to April 1, 1996, nor extend beyond September 15, 1996, without written approval of the Board.

(3) No more than two (2) persons per bedroom in the Residential Unit plus one (1) additional person shall be permitted under any approved lease during the Olympic Leasing Period.

(4) Olympic tenants will be permitted to park vehicles in the Residential Unit Owner's assigned parking space(s) in the parking garage to the same extent as permitted to the Residential Unit Owner, but must register the vehicle with the Board prior to the commencement of the lease. The Residential Unit Owner assigns his or her parking rights in the Residential Unit Owner's parking space(s) to the Residential Unit Owner's Olympic tenants during the term of the lease and the Owner is prohibited from parking a vehicle on the Common Elements or Limited Common Elements during the Olympic Leasing Period. The Residential Unit Owner also shall inform the Olympic tenants of all applicable parking regulations and shall ensure that the tenants obey all parking regulations.

(5) The Residential Unit Owner is responsible for providing the tenants with all keys, codes and openers required for access to and from the Residential Unit.

(6) The Residential Unit Owner is responsible for providing the tenants with copies of the Association's rules and regulations and for ensuring compliance with the rules and regulations and this Declaration.

(7) The Residential Unit Owner must provide the Board with phone numbers at which the Residential Unit Owner may be reached during the Olympic Leasing Period and must be available to respond to problems, issues or violations upon contact from the Board.

(8) Tenants occupying Residential Units under approved Olympic leases may not have or bring any pets onto the Condominium.

17. SALE OF UNITS.

An Owner intending to make a transfer or sale of a Unit or any interest in a Unit shall give written notice to the Board of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish to the Board as part of the notice (i) the name and address of the grantee; and (ii) such other information as the Board may reasonably require. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven (7) days after receiving title to a Unit, the purchaser of the Unit shall give written notice to the Board of his or her ownership of the Unit.

Upon failure of an Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Unit and the Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

18. MAINTENANCE RESPONSIBILITY.

(a) By the Owner. Except to the extent otherwise provided in subparagraph (b) below, each Owner shall have the obligation to maintain and keep in good repair all portions of his or her Unit. This maintenance responsibility shall include, but not be limited to the following: all glass surfaces (other than cleaning of the exterior of such glass surface), windows, window frames and casings and locks (except caulking of windows), all doors, doorways, door frames, and hardware that are part of the entry system of the Unit; decks, patios or balconies; the air conditioning compressor serving the Unit; and all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether located within or without a Unit's boundaries (including all gas, electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits, or other apparatus serving only the Unit). Except to the extent otherwise provided below, each Owner shall maintain all parts of the Unit and all Limited Common Elements assigned to his Unit.

In addition, each Owner shall have the responsibility:

(i) To keep in a neat, clean and sanitary condition any Limited Common Elements serving his or her Unit.

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

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

(iv) To pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do after notice from the Association to the Owner), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Owner, his or her family, tenants or guests, with the cost thereof to be added to and become part of the Owner's next chargeable assessment.

(b) By the Association. The Association shall maintain and keep in good repair as a Common Expense the "Area of Common Responsibility," which includes all Common Elements, the exterior surfaces of all improvements, except those listed in subsection (a) above, whether or not located within the boundaries of a Unit or within the Limited Common Elements of a Unit, and the Large Foyer Space, including the entry door and all hardware which is part thereof to the Large Foyer Space. The Area of Common Responsibility shall include, but not be limited to the following: roofs and roof supports (including, but not limited to roof joists and trusses, crossbeams, roof decking and underlaying, and shingles or other covering and surface materials); paving; brick; painting of the exterior side of the doors which comprise a boundary to a Unit or Limited Common Element, exterior trim, the exterior of decks and balconies; decks and balcony supports; all structural and/or load bearing walls, whether or not located in a Unit; maintenance and repair of all paved parking areas, including all parking spaces in the parking garage which are assigned to a Unit as a Limited Common Element; all maintenance and repair of stoops, landings, balconies, breezeways and stairways assigned as Limited Common Elements; and maintenance and repair of all storage areas which are not adjacent or connected to a Unit. Except to the extent that insurance required to be maintained or maintained by the Association

Amended

covers any damage or loss and except as otherwise provided herein, the Association shall not be responsible for any maintenance or repair to any Unit or to any Limited Common Element.

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

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

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

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

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

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

If the Board determines that the need for maintenance or repair is in the Area of Common Responsibility and is caused through the willful or negligent act

of any Owner, or Occupant or their family, guests, lessees, or invitees, then the Association may assess the cost of any such maintenance, repair, or replacement against the Owner's or Occupant's Unit, shall become a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

(d) Measures Related to Insurance Coverage.

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

(ii) In addition to any other rights the Association may have, if any Unit Owner does not comply with any requirement made by the Board pursuant to subparagraph (d) (i) above, the Association, upon fifteen (15) days' written notice, may perform such required act or work at the Owner's sole cost. Such cost shall be an assessment and a lien against the Unit as provided herein. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to subparagraph (d) (i) above, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Unit Owner or Occupant, except that access may be had at any time without notice in an emergency situation.

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

19. PARTY WALLS.

(a) General Rules of Law to Apply. Each wall built as a part of the construction of the Units which shall serve and separate any two (2) adjoining Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Paragraph, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

(c) Damage and Destruction. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has benefitted by the wall may restore it, and the other Owner or Owners thereafter who are benefitted by the wall or fence shall contribute to the cost of restoration thereof in equal proportions, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Paragraph shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(e) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Paragraph, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefor by the Board, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one (1) additional arbitrator and the decision by a majority of all three (3) arbitrators shall be binding upon the parties. Compliance with this subparagraph shall be a condition precedent to any right of legal action that either party may have against the other in a dispute arising hereunder.

20. MORTGAGEE'S RIGHTS.

(a) Unless at least sixty-seven percent (67%) of the total allocated votes in the Association and Eligible Mortgage Holders representing at least fifty-one percent (51%) of the votes of Units subject to mortgages held by Eligible Mortgage Holders give their consent, the Association or the membership shall not:

(i) by act or omission seek to abandon or terminate the Condominium;

(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;

(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 Condominium (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such portion of the Condominium.

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

(b) Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to judicial or nonjudicial foreclosure of the first Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

(c) Upon written request to the Association, identifying the name and address of the holder and the Unit number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:

(i) any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a first Mortgage held by such Eligible Mortgage Holder;

(ii) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Owner of any other obligation under the Condominium Instruments which is not cured within sixty (60) days;

(iii) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(iv) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

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

(e) Notwithstanding anything to the contrary herein contained, the provisions of Paragraphs 16 and 17 governing sales and leases shall not apply to impair the right of any first Mortgagee to: (i) foreclose or take title to a Unit pursuant to remedies contained in its Mortgage; (ii) take a deed or assignment in lieu of foreclosure; or (iii) sell, lease, or otherwise dispose of a Unit acquired by the Mortgagee.

21. GENERAL PROVISIONS.

(a) Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Condominium; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security on the Condominium. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Owner.

The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken.

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

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

(d) Implied Rights. The Association may exercise any right or privilege

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

22. EMINENT DOMAIN.

In the event of a taking by condemnation or by eminent domain, the provisions of the Act shall prevail and govern; provided, however, that any proceeds received for a taking of the Common Elements (other than Limited Common Elements) by condemnation or eminent domain shall, at the option of the Board, either be: (1) distributed to the Owners, (2) credited to future assessments due from the Owners, or (3) allocated to the Owners and deposited into the Association's operating account or reserve account to be applied to Common Expenses, pursuant to O.C.G.A. § 44-3-97(a), as amended. Each institutional holder of a first Mortgage shall be entitled to written notice of any such condemnation proceedings, and nothing in the Condominium Instruments shall be construed to give a priority to any Owner in the distribution of proceeds to such Unit.

23. EASEMENTS.

(a) Each Owner and Occupant shall have a right and easement of use and enjoyment in and to the Common Elements (including the right of access, ingress and egress to and from his or her Unit over those portions of the Condominium designated for such purpose), and such easement shall be appurtenant to and shall pass with the title to such Unit, subject to the rights of the Unit Owners to the exclusive use of the Limited Common Elements assigned to their respective Units and to the right of the Association to control the use and enjoyment of the Common Elements as provided by the terms of this Declaration including, but not limited to, the right of the Association to suspend voting and use privileges as provided herein. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit. All portions of the Condominium also shall be subject to easements of encroachment as provided in the Act.

(b) The Association, its directors, officers, agents, and employees (including, but not limited to any manager employed by the Association) shall have a right and easement to enter upon the Condominium or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the Owner(s) directly affected thereby.

(c) Each Residential Unit Owner shall have a right and easement to enter into the Large Foyer Space for the purpose of disposing of trash into the trash chute located therein, and for the purpose of gaining access to and from the breezeway area and for the purpose of gaining access to and from the rear stairwell.

(d) Each Owner, as well as the Association, shall have a right and easement to install and maintain air conditioning equipment on any portion of the Common Elements or Limited Common Elements as approved by the ACC, and provided such location complies with all applicable laws, ordinances, rules and regulations, including but not limited to historical preservation guidelines, in the event (i) the Association desires to centrally air condition the entire building; (ii) all Owners on a floor desire to centrally air condition all Units on their floor; or (iii) an Owner desires to centrally air condition his Unit.

(e) Each Owner of a Unit located on the tenth and eleventh floors of the Condominium shall have a right and easement to install and maintain at their expense electrical meters on (i) the interior breezeway of the ninth floor of the

Condominium, or (ii) such other portion of the Common Elements as set by the Board in its sole and absolute discretion.

24. AMENDMENTS.

Except where a higher vote is required for action under any other provisions of this Declaration or by the Act, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote thereof. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Fulton County, Georgia land records.

In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one (51%) percent of the votes of Units that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA").

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

25. SEVERABILITY.

Invalidation of any one of these covenants or restrictions by judgment or court order or otherwise shall in no way affect the application of such provision to other circumstances or affect any other provision(s), which shall remain in full force and effect.

26. PREPARER.

This Declaration was prepared by Seth G. Weissman and Daryl R. Griswold of Weissman, Nowack, Curry & Zaleon, P.C., Second Floor, 181 Fourteenth Street, Atlanta, Georgia 30309.

IN WITNESS WHEREOF, the undersigned officers of The Ponce Condominium Association, Inc., hereby certify that the above amendment to the Original Declaration and the following amendment to the Original By-Laws were duly adopted by the required majority of the Association and its membership.

This 16 day of OCTOBER, 1995.

THE PONCE CONDOMINIUM ASSOCIATION, INC.

By:

[Signature] [SEAL]
President/Chairman

Attest:

[Signature] [SEAL]
Secretary
[CORPORATE SEAL]

Sworn to and subscribed to
before me this 16 day of
October, 1995.

[Signature]
Witness

[Signature]
Notary Public
Notary Public, Clayton County, Georgia
My Commission Expires November 9, 1998
[NOTARY SEAL]



FAUSERIDARYLPONCEDEC9

EXHIBIT "A"
TO
AMENDED AND RESTATED DECLARATION
OF CONDOMINIUM FOR
THE PONCE CONDOMINIUM

All that tract or parcel of land lying and being in the City of Atlanta in Land Lot 49 of the 14th District of Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at a point at the intersection formed by the easterly side of Peachtree Street and the southeasterly side of Ponce de Leon Avenue, and running thence southerly along the easterly side of Peachtree Street, South 05 degrees 39 minutes 04 seconds West 30.41 feet to a point, said point also being North 05 degrees 41 minutes 55 seconds East 168.85 feet from a brass monument at North Avenue; thence South 88 degrees 35 minutes 13 seconds East, 210.17 feet to a brass monument, which brass monument is also located North 05 degrees 31 minutes 34 seconds East 47.37 feet from another brass monument; thence North 05 degrees 44 minutes 11 seconds East 18.18 feet to a brass monument; thence North 01 degree 00 minutes 00 seconds West 137.48 feet to a brass monument on the southerly side of Ponce de Leon Avenue; thence southwesterly along the southeasterly side of Ponce de Leon Avenue the following courses and distances: an arc distance of 62.10 feet to a point (said arc being subtended by a chord bearing South 76 degrees 49 minutes 21 seconds West 61.88 feet); an arc distance of 58.85 feet to a point (said arc being subtended by a chord bearing South 63 degrees 12 minutes 41 seconds West 58.57 feet); South 54 degrees 28 minutes 31 seconds West 38.45 feet to a point; South 48 degrees 41 minutes 48 seconds West 58.57 feet to a point; South 45 degrees 10 minutes 13 seconds West 26.37 feet to the Point of Beginning and being improved property with an 11-story building located thereon known as "The Ponce Condominium" and being improved property known as No. 75 Ponce de Leon Avenue, N.E., according to the present system of numbering in the City of Atlanta; together with the right, if any, to use a ten (10) foot alley extending southerly from the southeast corner of the property above described to North Avenue; and being more fully shown on a plat entitled "Survey of The Ponce Condominium," prepared by H.E. Harper, Land Surveyor No. 1321, dated July 14, 1982.

EXHIBIT "B"
TO
AMENDED AND RESTATED DECLARATION
OF CONDOMINIUM FOR
THE PONCE CONDOMINIUM

Comparison of Unit Numbers

Former Residential Unit 101 under the Original Declaration has been redesignated Commercial Unit 101.

Former Units 200 and 201 under the Original Declaration have been subdivided into Units 201, 202E, 204, 205, 206 and 207.

Former Unit 301 under the Original Declaration has been subdivided into Units 301A and 301B, which are now Units 301 and 302 respectively.

Former Unit 302 under the Original Declaration is now Unit 303.

Former Units 400 and 402 under the Original Declaration have been subdivided into Units 403, 404, 406E and 407.

Former Unit 401 under the Original Declaration has been subdivided into units 401 and 402.

Former Units 500 and 502 under the Original Declaration have been subdivided into Units 503, 504, 505, 506 and 507.

Former Units 600, 601 and 602 under the Original Declaration have been subdivided into Units 601, 602E, 604, 606E and 607.

Former Units 700 and 701 under the Original Declaration have been subdivided into Units 701, 702, 703, 704, 706E and 707.

Former Units 800, 801 and 802 under the Original Declaration have been subdivided into Units 801, 802, 803, 804, 806E and 807.

Former Units 900, 901 and 902 under the Original Declaration have been subdivided into Units 901, 902, 903, 904, 906E and 907.

Location and Description of the Units

Commercial Unit 1. This Unit is located on southwestern side of the building on the Basement Level and contains approximately 3,961 square feet.

Commercial Unit 100. This Unit is located in the southwestern portion of Floor One of the building and contains approximately 3,636 square feet. The western boundary of this Unit extends past the current existing exterior wall of the building out to the center line of exterior columns of the building.

Commercial Unit 101. This Unit is located at the northeast corner of the building on Floor One and contains approximately 1,534 square feet.

Commercial Unit 102. This Unit consists of the easterly half of Floor One of the building other than Commercial Unit 101. This Unit contains approximately 1,857 square feet.

Residential Units 201, 601, 701, 801, and 901. These Units are located on the north side of the building off the Large Foyer Space on Floors Two, Six,

Seven, Eight, and Nine respectively. Units 201, 701, and 801 each contain approximately 979 square feet. Units 601 and 901 each contain approximately 988 square feet.

Residential Units 202E, 602E and 902E. These Units are located on the northeastern and western sides of the building on Floors Two, Six and Nine respectively. Unit 202E contains approximately 2,301 square feet. Units 602E and 902E each contain approximately 2,490 square feet.

Residential Units 702 and 802. These Units are located on the northeastern side of the building on Floors Seven and Eight respectively. Each of these Units contains approximately 1,170 square feet.

Residential Units 403, 503, 703, and 803. These Units are located on the western side of the building on Floors Four, Five, Seven, and Eight respectively. Units 403 and 503 each contain approximately 1,345 square feet. Units 703 and 803 each contain approximately 1,329 square feet.

Residential Units 204, 404, 504, 604, 704, 804, and 904. These Units are located on the southern side of the building on Floors Two, Four, Five, Six, Seven, Eight, and Nine respectively. Unit 204 contains approximately 1,212 square feet. Units 404, 504, 604, 704, 804, and 904 each contain approximately 1,136 square feet.

Residential Units 206E, 406E, 606E, 706E, 806E, and 906E. These Units are located on the southwestern corner and western side of the building on Floors Two, Four, Six, Seven, Eight, and Nine respectively. Unit 206E contains approximately 1,308 square feet. Units 406E, 606E, 706E, 806E, and 906E each contain approximately 1,387 square feet.

Residential Units 207, 407, 507, 607, 707, 807, and 907. These Units are located on the western side of the building on Floors Two, Four, Five, Six, Seven, Eight, and Nine respectively. Each of these Units contains approximately 686 square feet.

Residential Unit 300. This Unit is located on the southwestern one-half of Floor Three of the building and contains approximately 3,587 square feet.

Residential Unit 301. This Unit is located on the north corner of the building on Floor Three and contains approximately 997 square feet.

Residential Unit 302. This Unit is located on the northeast corner of the building on Floor Three and contains approximately 1,081 square feet.

Residential Unit 303. This Unit is located on the eastern side of the building on Floor Three. The Original Declaration stated that this Unit (formerly known as Unit 302) contained approximately 1,662 square feet; however, it has been determined that this Unit contains approximately 1,396 square feet.

Residential Unit 401. This Unit is located on the north frontage of the building on Ponce de Leon Avenue on Floor Four and contains approximately 997 square feet.

Residential Unit 402. This Unit is located at the northeastern corner of the building on Floor 4 and contains approximately 1,081 square feet.

Residential Unit 501. This Unit is located on the north corner of the building on Floor Five and contains approximately 2,078 square feet.

NOTE: There is no Unit 502.

Residential Unit 505. This Unit is located on the southwestern corner of

the building on Floor Five and contains approximately 687 square feet.

Residential Unit 506. This Unit is located on the western side of the building on Floor Five and contains approximately 625 square feet.

Residential Units 1001 and 1101. These Units are located in the northeasterly portion of the building fronting Ponce de Leon Avenue on Floors Ten and Eleven respectively. Each of these Units contains approximately 784 square feet.

Residential Units 1002 and 1102. These Units are located in the northeasterly corner of the building on Floors Ten and Eleven respectively. Each of these Units contains approximately 1,025 square feet.

Residential Units 1003 and 1103. These Units are centrally located on the east side of the building on Floors Ten and Eleven respectively. Each of these Units contains approximately 825 square feet.

Residential Units 1004 and 1104. These Units are located on southeastern corner of the building facing east on Floors Ten and Eleven respectively. The Original Declaration stated that these Units contained approximately 606 square feet; however, it has been determined that each of these Units contains approximately 582 square feet.

Residential Units 1005 and 1105. These Units are located at the southeasterly corner of the building facing south on Floors Ten and Eleven respectively. Each of these Units contains approximately 511 square feet.

Residential Unit 1006. This Unit is centrally located on the south side of the building on Floor Ten and contains approximately 628 square feet.

Residential Unit 1007. This Unit is located at the southwest corner of the building on Floor Ten and contains approximately 907 square feet.

Residential Units 1008. This Unit is located on the southwestern frontage of the building on Ponce de Leon Avenue on Floor Ten and contains approximately 599 square feet.

Residential Units 1009 and 1109. These Units are centrally located on the portion of the building fronting on Ponce de Leon Avenue on Floors Ten and Eleven respectively. Each of these Units contains approximately 545 square feet.

Residential Unit 1010. This Unit is located on the interior core of the building adjacent to Elevator No. 1 on Floor Ten and contains approximately 452 square feet.

Residential Unit 1106. This Unit is centrally located on the southern side of the building on Floor Eleven. The Original Declaration stated that this Unit contained approximately 628 square feet; however, it has been determined that this Unit contains approximately 551 square feet.

Residential Unit 1107. This Unit is located on the southwest corner of the building on Floor Eleven. The Original Declaration stated that this Unit contained approximately 907 square feet; however, it has been determined that this Unit contains approximately 707 square feet.

Residential Unit 1108. This Unit is located on the southwestern frontage of the building on Ponce de Leon Avenue on Floor Eleven. The Original Declaration stated that this Unit contained approximately 599 square feet; however, it has been determined that this Unit contains approximately 624 square feet.

Residential Unit 1200. This Unit is located on the southwest corner of the building on the Rooftop Level and contains approximately 749 square feet.

Residential Unit 1201. This Unit is located at the northeast corner of the building on the Rooftop Level and contains approximately 790 square feet.

Residential Unit 1202. This Unit is located on the southeastern corner of the building on the Rooftop Level. The Original Declaration stated that this contained 1,046 square feet; however, it has been determined that this Unit contains approximately 1,179 square feet.

Percentage Allocation of Interest in Common Elements, Voting Rights and Liability for Common Expenses

<u>Unit Number</u>	<u>Percentage Allocation of Interest in Common Elements, Voting Rights and Liability for Common Expenses</u>
1	4.63
100	4.25
101	1.80
102	2.17
201	1.27
202E	3.24
204	1.48
206E	1.71
207	0.89
300	4.20
301	1.17
302	1.27
303	1.95
401	1.17
402	1.27
403	1.85
404	1.56
406E	1.80
407	0.94
501	2.44
503	1.97
504	1.53
505	0.92
506	0.83
507	0.90
601	1.27
602E	3.24
604	1.48
606E	1.71
607	0.89
701	1.26
702	1.50
703	1.74
704	1.47
706E	1.70
707	0.88
801	1.27
802	1.50
803	1.74
804	1.48
806E	1.71

807	0.89
901	1.27
902E	3.24
904	1.48
906E	1.71
907	0.89
1001	0.91
1002	1.19
1003	0.96
1004	0.70
1005	0.59
1006	0.73
1007	1.06
1008	0.70
1009	0.63
1010	0.52
1101	0.91
1102	1.19
1103	0.96
1104	0.70
1105	0.59
1106	0.73
1107	1.06
1108	0.70
1109	0.63
1200	0.87
1201	0.92
1202	<u>1.22</u>
	100.00

Description of Limited Common Elements

The Limited Common Elements are all Common Elements except the following: the front steps of the building on the first floor by the main entrance, the exterior facade and surfaces of the building, all structural supports, columns and load bearing walls and structures, the roof of the building, the basement area, Elevators No. 1 and No. 3, the rear stairwell adjacent to Elevator No. 3 as well as the landing area for such stairwell located on the first floor, all concrete and paving areas surrounding the building and the parking garage. The front porch areas adjacent to Unit 100 shall be a Limited Common Element appurtenant to Unit 100. The front porch area adjacent to Units 101 and 102 shall be a Limited Common Element appurtenant to Units 101 and 102. The basement level rooftop area located along the eastern side of the building adjacent to Unit 102 shall be a Limited Common Element appurtenant to Units 101 and 102. The roof above a portion of Unit 100 shall be a Limited Common Element appurtenant to Unit 100. All other Limited Common Elements are appurtenant to the Residential Units.