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Linda Carter

Linda Carter
Clerk of Superior Court DeKalb Cty. Ga.
I hereby certify that the foregoing is a true and correct copy of the original as filed in my office.

DECLARATION OF CONDOMINIUM

FOR

WALDEN LAKE

DEKALB COUNTY, GEORGIA

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FOR
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§ 43-3-70 *et seq.*, and to the provisions of this Declaration. By virtue of the recording of this Declaration, said Property shall be held, sold, transferred, conveyed, used, occupied and mortgaged or otherwise encumbered subject to provisions of the Georgia Condominium Act and the covenants, conditions, restrictions, easements, assessments and liens set forth in this Declaration, which are for the purpose of protecting the value and desirability of, and which shall run with the title to the Property and shall be binding on all persons having any right, title or interest in all or any portion of the Property subject to this Declaration, their respective heirs, legal representatives, successors, successors-in-title and assigns, and shall be for the benefit of all owners of the Property subject to this Declaration.

ARTICLE I

NAME

The name of the Condominium is Walden Lake Condominium (hereinafter called "Walden Lake" or the "Condominium," as further defined herein), which Condominium is hereby submitted by Declarant to the Georgia Condominium Act, O.C.G.A. §44-3-70, *et seq.* (Michie 1982), as the same may be amended.

ARTICLE II

DEFINITIONS

As used in this Declaration, the Bylaws and the Articles of Incorporation of the Association, the terms below shall have the meanings ascribed to them in this Article II, such definitions being cumulative of those set forth elsewhere in this Declaration. In addition, all terms used in this Declaration which are defined in the Act shall have the meanings ascribed to them in the Act, unless other definitions are set forth for the same in this Declaration.

- (a) "Act" shall mean the Georgia Condominium Act, O.C.G.A. § 43-3-70 *et seq.*
- (b) "Additional Property" shall mean the property described in Exhibit "B" attached hereto and incorporated herein which may be submitted to the Condominium as provided in this Declaration.
- (c) "Annual Assessment" shall have the meaning specified in Section 4 of Article VI hereof, and shall constitute the assessments which, pursuant to the provisions of Article VI hereof, shall be levied by the Association against the Units each year for the purpose of raising the funds necessary to pay the "Annual Expenses" (as that term is defined in Section 3 of Article VI hereof).
- (d) "Architectural Control Committee" or "ACC" shall mean the committee established to exercise the architectural review powers set forth in this Declaration.
- (e) "Architectural Plans" shall mean those preliminary plans and designs of Units which are proposed to be built at the Condominium as said Plans are more particularly shown on Exhibit "C" attached hereto and incorporated herein by reference, as the same may be amended from time to time.
- (f) "Area of Common Responsibility" shall mean and refer to the Common Elements,

- (t) "Limited Common Elements" shall 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 in this Declaration.
- (u) "Majority" shall mean those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) of the total eligible number.
- (v) "Mortgage" shall mean 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.
- (w) "Mortgagee" or "Mortgage Holder" shall mean the holder of any Mortgage.
- (x) "Occupant" shall mean any Person occupying all or a portion of a Unit for any period of time, regardless of whether such Person is a tenant or the Owner of such property.
- (y) "Owner" shall mean the record title holder of a Unit within the Condominium, as shown on the deed records maintained by the Clerk of Superior Court of DeKalb County, Georgia, but shall not include a Person who is only a Mortgage holder.
- (z) "Patio" shall mean the poured-concrete patio that was laid down and installed adjacent to each Unit as part of the original construction of such Unit. Each patio shall be a limited common element assigned to that Unit to which it is attached.
- (aa) "Person" shall mean a natural person, corporation, firm, association, limited liability company, trust, partnership or any other legal entity.
- (bb) "Plat" shall mean, collectively, the plat that is identified in Section 1 of Article III of this Declaration, and all plats that are hereafter recorded in the Condominium Plat Records of DeKalb County, Georgia, pursuant to the provisions of Section 2 of Article III of this Declaration, regarding the submission of Additional Property to the Condominium Instruments.
- (cc) "Stoop" shall mean the front stoop that was constructed as part of the original construction of each Unit. Each stoop shall be a Limited Common Element assigned to that Unit (or those Units) to which it is attached.
- (dd) "Units" shall mean each of those parcels of real property, and all improvements located thereon, described in Section 1 of Article III of this Declaration, and shown and depicted as Units on the Plat and each of those additional parcels of real property, and all improvements located thereon, as may hereafter be subjected to this Declaration as Units in the manner described in Section 2 of Article III of this Declaration.

All pronouns used in this Declaration are intended to be gender neutral, and the use of the masculine gender shall be deemed to include the feminine and neuter genders.

ARTICLE III

UNITS

Section 1. Property Hereby Subjected to the Act and this Declaration. The Condominium subject to this Declaration and the Act is located in Land Lot 9 of the 16th District,

DeKalb County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration and incorporated herein by this reference. The Plat and Floor Plans relating to the Condominium will be filed in DeKalb County, Georgia records at the time the Property is submitted to this Declaration. The Plat and Floor Plans are incorporated herein by this reference as fully as if the same were set forth in their entirety herein.

The Declarant, for itself, its successors and assigns, hereby further covenants that the Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in the Act and in this Declaration including, but not limited to, the lien provisions set forth in Article VI hereof. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration shall be a permanent charge thereon, and shall run with title to the Units.

Section 2. Additional Property. The Declarant may, at any time, and from time to time, subject additional portions of the Property described in Exhibit "B" to the Act and to this Declaration by:

(a) executing and recording in the Deed Records of DeKalb County, Georgia, an amendment to this Declaration describing such Additional Property and stating that this Declaration is thereby extended to, and shall thereafter apply to, such Additional Property; and

(b) recording in the Plat Book Records of DeKalb County, Georgia, a Plat showing and depicting the Additional Property being thereby subjected to this Declaration.

From and after the subjecting of such Additional Property to the Act and this Declaration, such Additional Property shall thereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration including, without limitation, all lien and assessment provisions set forth in this Declaration. From and after the subjecting of such Additional Property to this Declaration, all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration shall be a permanent charge thereon, and shall run with the title to, such Additional Property.

Notwithstanding the foregoing provisions of this Section, however, the maximum number of Units that may be created on the Additional Property and added to the Condominium that the Declarant may subject to this Declaration is one hundred forty (140) Units. The maximum average number of Units per acre that may be created on any portion of property added to the Condominium is twelve (12).

Except as otherwise provided in the Act (and provided that the number of Units which may be created on the Additional Property does not exceed the maximum for the same that is hereinabove set forth), no approval from any member of the Association, or from anyone else whomsoever, shall be required for the Declarant to subject any Additional Property to this Declaration. Declarant makes no representation or warranty whatsoever as to when or if all or any of the Additional Property will be made subject to this Declaration. Declarant shall have the

right to add all or any portion of, or none of, the Additional Property to this Declaration at such time and in such manner as Declarant, in its sole discretion, deems appropriate. In the event part or all of the Additional Property is not made subject to this Declaration, Declarant makes no representation or warranty whatsoever as to how the Additional Property will be used or what will be constructed thereon.

Additional Property may be added to this Declaration at different times and from time to time. Any additional Units added to the Condominium will be restricted exclusively to residential use. Any additional structures will be architecturally compatible with any then existing structures in terms of quality of construction, the principal materials to be used and architectural style. Except for zoning and other governmental requirements, there are no limitations as to the location of improvements on the Additional Property. No assurances are made as to what other improvements, if any, will be made on any Additional Property. No assurances are made that any Units created on the Additional Property will be substantially identical to the Units on the originally submitted Property, including, but not limited to the quality of construction, the principal materials to be used in such construction and architectural style. No limitations are placed on the Declarant's right to create Limited Common Elements on any portion of the Additional Property. There are no limitations fixing the boundaries of any portion of the Additional Property which may be submitted to the Declaration, and there are no limitations regulating the order in which portions of the Additional Property may be submitted to the Declaration. This option shall expire seven (7) years from the date of recording of this Declaration; provided, however, that Owners of Units to which two-thirds (2/3) of the total vote in the Association appertain, excluding any votes appurtenant to any Unit or Units then owned by the Declarant, may consent to the extension of this expansion option within one (1) year prior to the date upon which the option would have otherwise expired. The Additional Property shall be subject to the use restrictions set forth herein when it is added to the Condominium. Upon any expansion of the Condominium, each Unit will continue to have one vote, and liability for Common Expenses will be divided equally among the Units existing within the Condominium from time to time. The Condominium Units thereby created and added shall be owned by Declarant, but the Common Elements shall be owned by all of the Unit Owners.

Section 3. No Effect on Balance of Additional Property. Notwithstanding anything contained in this Declaration which may be construed to the contrary, this Declaration does not create any charge, lien, encumbrance, restriction, or limitation on any portion of the Additional Property which has not yet been submitted to this Declaration or to the Act unless and until any portion of such Additional Property is subjected to this Declaration in the manner set forth, respectively, in Section 2 of this Article III or in Section 1 of Article IV, and then, only from that time forward.

Section 4. Unit Boundaries. The Condominium will be divided into separate residential Units, Common Elements and Limited Common Elements. Each Unit consists of a dwelling, and its appurtenant percentage of undivided interest in the Common Elements. 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 Plat and the Floor Plans. Each Unit includes that part of the structure which lies within the following boundaries:

(a) **Vertical Boundaries.** The side vertical boundaries of each Unit shall be the center line of the firewall separating such Unit from an adjacent Unit. The front and rear vertical boundaries, and the side boundary of each Unit which does not separate a Unit from another Unit, shall be the outer, exterior surface of the outside wall of such Unit.

(b) **Horizontal Boundaries.** There are no upper boundary limits to each Unit. The lower boundary for each Unit shall be the uppermost surface of the unfinished floor of the first story of each Unit.

(c) **Additional Information to Interpret Unit Boundaries.** In interpreting deeds and Floor Plans, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original Floor Plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or Floor Plan, regardless of settling or lateral movement of the building in which the Unit is located, and regardless of minor variance between the boundaries shown on the Floor Plans or in a deed and those of the Unit.

Entry doors, glass surfaces, including but not limited to windows and glass doors, serving the Unit shall be located within the boundaries of a Unit. Heating and air conditioning systems serving a single Unit (including any part of any such system lying outside the boundaries of the Unit), all duct work for such systems and appliances and plumbing fixtures within a Unit shall be part of the Unit. If any chutes, flues, ducts, conduits, wires, pipes or other apparatus lies partially within and partially outside of the designated boundaries of a the Unit, any portion thereof which shall serve only that Unit shall be deemed to be a part of that Unit, while any portions thereof which serve more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements.

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, as the same may change with the addition of Additional Property, attributable to such Unit, together with membership in the Association and an undivided interest in the funds and assets held by the Association.

Section 5. All Units Bear the Burdens and Enjoy the Benefits of this Declaration. Every person who is a record owner of a Unit does, by acceptance of a deed or other conveyance thereto, and by acceptance of such ownership, and by taking record title to such Unit, agree to all of the terms and provisions of this Declaration. Each of the Units is subject to all the burdens, and enjoys all the benefits, made applicable hereunder.

Section 6. Easements Over the Units. The Units shall be subject to, and the Declarant does hereby grant to the appropriate grantees thereof, the following easements:

(a) Each Unit shall be subject to all easements which are shown and depicted on the Plat as affecting and burdening such Unit;

(b) Each Unit shall be subject to an easement for the entry by the authorized agents and representatives of the Association to go in and upon such Unit under the circumstances, and for the purposes, described in Article IV of this Declaration.

Section 7. Condominium Act Provisions. The following information is included as required by the Act:

- (a) The name of the Condominium is "Walden Lake, a Condominium".
- (b) The Condominium is located in DeKalb County, Georgia.
- (c) The Property is described on Exhibit "A" attached hereto. The Submitted Property has no horizontal boundaries.
- (d) The Unit boundaries are described in Article III Section 4 of this Declaration.
- (e) The Limited Common Elements are described in the Definitions section of this Declaration and are more fully shown on the Plat and Floor Plans.
- (f) There are no Common Elements which may subsequently be assigned as Limited Common Elements.
- (g) Each Unit has an equal undivided interest in the Common Elements.
- (h) Each Unit has one vote.
- (i) Each Unit has an equal share of liability for Common Expenses.
- (j) There are no limitations or restrictions on the powers of the Association and the Board of Directors, except as may be provided in the Condominium Instruments.
- (k) Restrictions on the general use of the Condominium are contained in this Declaration.
- (l) Provisions for expansion of the Condominium are set forth in Article III, Section 2 of this Declaration.

Section 8. Unit Types. Architectural plans for each type of Unit have been filed with the Clerk of Superior Court of DeKalb County. The architectural plans and specifications for each Unit is set forth on Exhibit C attached hereto and incorporated herein by this reference.

ARTICLE IV

COMMON ELEMENTS

Section 1. Common Elements. The Common Elements consists of all portions of the Condominium not located within the boundaries of a Unit. The Common Elements include, without limitation the private roadways serving the Condominium, certain utilities, fences, entry features, paving, retaining walls, the foundations of each building, detention pond, landscape areas, outside parking areas and lighting for same, mail boxes, dumpster, swimming pool and all equipment and furniture for same, pool house, all other lighting, personal property, equipment and furniture in any Common Element of the Condominium building(s), and limited access gated entry system.

Ownership of the Common Elements shall be by the Unit Owners as tenants-in-common. Each Unit is attributed an equal percentage of undivided interest in and to the Common Elements. Such percentages of undivided interest may be altered only by the consent of all Owners and Mortgagees (or such lesser number of Owners and Mortgagees as may hereafter be prescribed by the Act) expressed in a duly recorded amendment to this Declaration, except in the case of expansion of the Condominium, as provided in Section 2 of Article III hereof, in which case the amendment may be approved and executed by Declarant without approval of the Owners or Mortgagees.

The Common Elements shall remain undivided, and no Owner nor 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.

Section 2. Limited Common Elements.

(a) The Limited Common Elements located on the Condominium and the Unit(s) to which they are assigned are:

(i) stoops and entryways serving more than one (1) but less than all Units, as shown on the Floor Plans, are assigned as Limited Common Elements to the Units which they serve;

(ii) the portion of the Common Elements on which there is located any portion of the air conditioning or heating system exclusively serving a particular Unit or Units is assigned as Limited Common Element to the Unit or Units so served;

(iii) any utility meter which serves only one (1) Unit is assigned as a Limited Common Element to the Unit so served;

(iv) any porch, patio or terrace attached to and serving only one (1) Unit is assigned as a Limited Common Element to the Unit to which it is attached and which it serves;

(viii) any chimney and fireplace flue adjoined and connected to a Unit or Units are assigned as Limited Common Elements to the Unit or Units to which they are adjoined and connected; and

(ix) each Unit is assigned one (1) mailbox or mail slot.

The Association's Board of Directors, without need for a membership vote, is hereby authorized to assign and to reassign Limited Common Elements and Common Elements not previously assigned, 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. A Common Element not previously assigned as a Limited Common Element may be so assigned and a Limited Common Element may be reassigned by the Board, without the need for a vote of the Association, upon written application to the Association by the Unit Owner or Owners for whose exclusive use such Common Element is requested or whose use of the Limited Common Element previously assigned is directly affected. Upon such application, the Association shall prepare and execute an amendment to the Declaration assigning the Common Element as a Limited Common Element or Owners making such application. Such amendment shall be delivered and become effective as provided in Section 44-3-82 of the Act. For so long as the Declarant owns a Unit primarily for the purpose of sale, an amendment to assign a Common Element, not previously assigned as a Limited Common Element shall be executed by the officers of the Association, if the request is made by the Declarant. The Board has the right to approve or disapprove any such request made by any Person other than the Declarant.

Section 3. Members' Rights in Common Elements. Every Owner of any Unit shall have a non-exclusive right and easement of enjoyment and use in and to all portions of the Common Elements, including, but not limited to a non-exclusive perpetual right, privilege and easement in and to, upon, over and across the streets, driveways and parking areas and facilities located at the Condominium, (excluding Limited Common Elements) and such right and easement shall be appurtenant to, and shall pass with, the title to the Unit(s) owned by such Owner. Such right and easement of enjoyment and use are and shall be subject to the easements which are described in Section 3 of this Article IV, to all other provisions of this Declaration relating to the use of the Common Elements, and to the right of the Association to promulgate reasonable rules and regulations regarding the use of the Common Elements, and to the right of the Association, as provided in the Bylaws, to suspend the enjoyment rights of the Owner of any Unit during any period in which any assessment which is due to the Association from such Owner remains unpaid, and such period as the Board of Directors may consider appropriate for any infraction of its published rules and regulations.

Section 4. Easements Over Common Elements. All Common Elements shall be subject to, and Declarant and the Association do hereby grant, the following easements:

(a) An easement in favor of Declarant and any and all utility companies, across, in, under, over and through the Common Elements for the purposes of the construction, installation, repair, maintenance and use of all utility and drainage lines, wires, pipes and similar facilities as may be reasonably necessary for the provision of utility services (including, water, sewer, gas, electric, cable television and telephone services) to all or any portion of the Condominium;

(b) An easement in favor of Declarant for the exclusive use of such portions of the Common Elements as may be reasonably desirable, convenient or incidental to (i) the construction and installation of improvements on, and the sale of, any Unit, including, but not limited to, sales and business offices, storage areas, construction yards and signs; (ii) to gain access and ingress to, egress from and use of the Common Elements for the placement and maintenance of signs, banners, balloons, decorations, marketing materials, sales office, business office, promotional facilities and model Units on any portion of the Condominium, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient or incidental to the completion, improvement, development, sale or lease of any Unit; (iii) a right over, through, under and across the Common Elements and Limited Common Elements for the purpose of constructing, installing, replacing, repairing, restoring and maintaining all utilities, buildings, driveways, roads, landscaping and any other improvements on the Condominium or serving the Condominium, and for the purpose of doing all things reasonably necessary and proper in connection therewith. Such easements shall be exercisable by any and all persons whom the Declarant shall authorize to exercise the same, including, without limitation, real estate sales agents and brokers and builders of Units, irrespective of whether such persons are affiliated with the Declarant. Such easements shall exist notwithstanding any provision of this Declaration which might be construed to the contrary, but shall terminate at such time as the construction of the Units has been completed and all of the Units shall have been conveyed to Owners thereof who shall not have acquired the Units for the purpose of immediate resale of the same. Such easements shall and do exist without affecting the obligation of the Owner of any Unit to pay assessments or charges coming due during such period of time as portions of the Common Elements shall be used by authorized persons pursuant to the exercise of the easements herein stated.

(c) The easements described in Section 5 of this Article IV; and

(d) An easement in favor of the Association, Declarant and those hired by either the Association or the Declarant for the continued maintenance, repair, replacement and use of the area on which the air-conditioning compressor serving any Unit is located, such easement to be appurtenant to the Units served by such air-conditioning compressor.

Section 5. Easement Areas. There shall be appurtenant to each Unit an easement in favor of the Owner of such Unit, over a portion of the Common Elements for the exclusive use and enjoyment of the Easement Area that is depicted on the Plat recorded in connection with the subjecting of such Unit to the terms of this Declaration as being appurtenant to such Unit. Such easement shall include the rights to plant shrubbery, plants, trees, flowers, bushes, grass, ivy and other foliage in and on such Easement Area, and to erect a fence in accordance with the provisions of Article X, Section 3 of this Declaration. Such Easement Area shall be maintained

by the Owner of the Unit to which such Easement Area is appurtenant, as more particularly described in Article X hereof.

Section 6. Construction within Common Elements. In no event shall any Person construct, place, install, plant or mount any structure, plant, tree, shrub or other item on any part of the Common Elements (including within any Easement Area), except for (i) fences permitted under the provisions of Section 3 of Article X hereof, (ii) items placed or installed on the Patios in accordance with all other terms and restrictions set forth in this Declaration, (iii) plants, shrubbery, trees, flowers, bushes, grass, ivy or other foliage planted in an Easement Area pursuant to the exercise of the easement set forth in Section 4 of this Article IV, and (iv) items placed with the prior, written permission of the Board of Directors.

Section 7. Temporary Structures. Subject to the right of the Declarant to promote the sale of Units, no structure of a temporary character, including, without limitation, any trailer, tent, shack, garage or other building, shall be permitted on any part of the Common Elements at any time, whether temporarily or permanently, except with the prior written consent of the Board of Directors. No temporary building, trailer, garage or building in the course of construction shall be used, temporarily or permanently, as a residence.

Section 8. Vehicles; Trailers; Boats; Automobiles. All vehicles belonging to Owners or occupants of any Unit shall be parked only in the designated parking areas. Guests of the Owners or Occupants of any Unit may park vehicles in a designated parking area for a period not to exceed twenty-four (24) hours at a time. No boats, trailers, recreational vehicles, motorcycles, trucks of a capacity of one (1) ton or more or unlicensed vehicles may be parked in any portion of the Common Elements. No maintenance or repair of any vehicle shall take place on any part of the Property or Additional Property.

Section 9. Parking Spaces. Parking spaces are not reserved. Two (2) spaces per Unit are provided, and Owners are encouraged to park in spaces in front of their Units.

ARTICLE V

THE ASSOCIATION

Section 1. The Association. Prior to the date this Declaration has been filed for record with the Clerk of the Superior Court of DeKalb County, Georgia, the Declarant has caused the Association to be formed, and the Association does now exist, under its Articles of Incorporation and Bylaws.

The Association is and shall be responsible for the control, improvement, replacement, management and operation of the Area of Common Responsibility, the enforcement of the covenants and restrictions set forth in this Declaration, and the performance of such other duties and services as the Board of Directors shall deem to be in the best interests of the members of the Association. Declarant shall maintain control of the Association for the maximum period of time permitted by O.C.G.A. § 44-3-101. The Association shall also make and enforce reasonable rules and regulations governing the use of the Condominium, including the Units, Limited

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

- (a) to enter into Units for maintenance, emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit. For the purposes of this Paragraph, an emergency justifying immediate entry into a Unit shall include, but not be limited to the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a person or animal might be injured or sick and require immediate medical attention. No one exercising the rights granted in this subparagraph shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a Unit shall exist;
- (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 § 44-3-76 of the Act, as amended;
- (d) to grant and accept 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 acquire, hold, and dispose of tangible and intangible personal property and real property;
- (h) to establish a construction deposit in a reasonable amount determined by the Board of Directors to be paid by all Owners making modifications, alterations or additions to their Units in order to protect the Condominium against damage due to the transportation and use of construction materials in the Condominium. Costs for repair of such damage may be deductible from the construction deposit and any additional expenses may be specifically assessed against the Unit; and

(i) to approve contractors or subcontractors who have access to the Condominium for the purpose of making repairs or improvements to Units based on criteria adopted by the Board which may include insurance requirements and require deposits for use of the trash receptacle; and

(j) at the sole expense of the Association, without need for a membership vote, and without the consent of any affected Unit Owner, to relocate any portion of the air conditioning, heating, plumbing, ventilating, exhaust or electrical system serving a particular Unit, provided that after such relocation, the system serving the Unit functions at least as well and at no greater cost to the Unit Owner as existed prior to the relocation.

Section 2. Membership. Every person who is, or who becomes, a record Owner of a fee or undivided fee interest in any Unit is and shall be a member of the Association; provided, however, that any such person who holds such interest merely as security for the performance of an obligation shall not be a member of the Association. The transfer of ownership of a fee or undivided fee interest in any Unit shall automatically transfer membership in the Association, and in no event shall such membership be severed from the ownership of such Unit.

Section 3. Suspension of Membership Rights. The membership rights of any member of the Association, including the right to vote and to use the Common Elements (except for the right to access to and from the Unit owned by such member), may be suspended by the Board of Directors pursuant to the authority granted in Condominium Instruments. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the member's Unit in favor of the Association

Section 4. Meetings of the Membership. All matters concerning the meetings of members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to members, the quorum required for the transaction of business at any meeting, and the vote required on any matter, shall be as specified in the Act, this Declaration, or in the Articles of Incorporation or the Bylaws, or by law.

Section 5. Association Acts Through Its Board of Directors. Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the members of the Association must vote. No member of the Board of Directors of the Association or any officer of the Association shall be personally liable to any Owner of any Unit for any mistake of judgment or for any other act or omission of any nature whatsoever, except for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence or fraud.

Section 6. Professional Management. The Association may, but shall not be obligated to, obtain and pay for the services of any Person or other entity to manage the affairs of the Association, or any part thereof, and may enter into such agreement for the management of the Common Elements as the Board of Directors deems to be in the best interests of the Association.

ARTICLE VI

ASSESSMENTS

Section 1. Assessments; Lien Therefore. The Declarant, as the Owner of all of the Units, hereby covenants, and each person who shall own any Unit, by acceptance of a deed or other conveyance thereto, and by acceptance of such ownership, and by taking record title thereto, shall be deemed to covenant and agree to pay to the Association all assessments and charges which are levied by the Association against the Unit(s) owned by such person in accordance with the terms and provisions of this Declaration. Annual Assessments for each Unit shall begin to accrue at the time such Unit is first submitted to this Declaration. Each Unit shall have an equal share of the liability for Common Expenses pursuant to O.C.G.A. § 44-3-80, regardless of the floor area of such Unit.

As more fully provided in § 44-3-80 of the Act, all sums lawfully assessed by the Association against any Unit and the Owner thereof, shall, from the time the sums became due and payable, be the personal obligation of the Owner of such Unit and constitute a lien in favor of the Association on such Unit prior and superior to all other liens whatsoever, except as provided in 44-3-109 of the Act.

Section 2. Personal Obligation of Members. Each member of the Association, by acceptance of a deed or other conveyance to the Unit(s) owned by such member, irrespective of whether it shall be so expressed in any such deed or other conveyance, and by acceptance of ownership of such Unit(s), and by taking record title to such Unit(s), shall be deemed to covenant and agree to pay to the Association:

(a) His or her share of the Annual Assessments which shall be levied by the Association in accordance with Section 4 hereof; and

(b) When properly authorized in accordance with Sections 5 and 6 hereof, initial and special assessments, such initial and special assessments to be fixed, established and collected from time to time as hereinafter provided;

(c) Specific assessments against any particular Unit which are established pursuant to the terms of this Declaration, including but not limited to reasonable fines imposed in accordance with the terms of this Declaration.

All such assessments, together with charges, costs and interest thereon and costs of collection thereof (including reasonable attorney fees actually incurred), as hereinafter provided, shall be a continuing lien upon the Unit against which each assessment is made and shall also be the personal obligation of the Owner of the Unit against which such assessments are levied at the time such assessments become due and payable. The covenant to pay assessments herein stated is and shall be a covenant running with the land. 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.

Section 3. Purposes of Assessments. The assessments levied on an annual basis by the Association pursuant to Section 4 of this Article VI shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to the Act, this Declaration, the Articles of Incorporation and the Bylaws (such costs and expenses being herein referred to as the "Annual Expenses"). Without limiting the generality of the foregoing, the Annual Expenses shall include the costs of: repair and maintenance of all Common Elements which are to be maintained by the Association; payment of all governmental charges, taxes and assessments which shall be levied against all Common Elements; payment of all costs and expenses incurred by the Association in connection with its operations; payment of the premiums for all policies of property and liability insurance maintained by the Association; payment of the premiums for all fidelity bonds which shall be obtained by the Association; the maintenance of reserves for the repair and replacement of improvements located on the Common Elements and for such other purposes as the Board of Directors shall determine; the payment of the fees of such management firms as the Board of Directors shall employ (which management firms may be affiliated with Declarant); accounting charges and administrative fees in managing the business and affairs of the Association; and payment of the fees for the provision of such professional services as the Board of Directors shall determine to be required by the Association, including legal, accounting and architectural services.

Section 4. Determination of Annual Assessment and Shares Thereof. Prior to the commencement of each fiscal year of the Association (said fiscal year being specified in the Bylaws), the Board of Directors shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures and reserve fundings based upon such estimate and providing for the total Annual Assessment to be levied against the members of the Association for such fiscal year (the total assessment which shall be so determined and levied against all of the members of the Association for any fiscal year is herein referred to as the "Annual Assessment"). Initially, the Annual Assessment shall be in the amount of \$1,320.00 per Unit per year. The amounts so determined by the Board of Directors shall be levied against all of the members of the Association and the Units. The amount of the Annual Assessment that shall be levied against each Unit shall be equal. The Board of Directors shall send a copy of the budget so adopted by it, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Unit, to the Owner of each Unit prior to the commencement of the fiscal year during which such Annual Assessment is to be paid. The amount of such Annual Assessment which shall be levied against each Unit shall be due and payable to the Association in monthly, quarterly or annual installments, as determined by the Board of Directors. After notice of the same shall have been given to all of the members of the Association by the Board of Directors, Assessments shall be paid to the Association when due without further notice. So long as Declarant has the right to control the Board of Directors of the Association, the Annual Assessments for a particular year shall not increase by more than the greater of (i) the percentage increase in the Consumer Price

Index for all Urban Consumers, U.S. City average, or (ii) 5% above the Annual Assessment for the preceding year.

Section 5. Initial Assessments.

(a) In addition to the Annual Assessments described in Section 4 and the Special Assessments described in Section 6, at the time each Unit is first sold or conveyed to an Owner other than the Declarant or builder, the purchaser or grantee of such Unit shall pay to the Association a one-time non-refundable initial assessment in the amount of \$330.00 ("Initial Assessment"). Such funds shall be used for the purpose of providing working capital to the Association, and for such other purposes as may be determined by the Board of Directors.

(b) At the time of any transfer of title to a Unit, other than (i) a transfer by Declarant (ii) a transfer by a builder to the first occupant of a Unit, or (iii) any transfer occurring prior to the issuance of a Certificate of Occupancy for such Unit, there shall be paid to the Association a one-time transfer fee in the amount of \$150.00. Such funds shall be used to reimburse the Association for reasonable costs and expenses incurred in processing transfers of ownership, and in printing and distributing copies of this Declaration and the Bylaws.

Section 6. Special Assessments. If, for any reason, including non-payment of any assessments to the Association by the persons liable therefore, the budget adopted by the Board of Directors for any fiscal year shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Board of Directors shall determine that it is in the best interests of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Board of Directors shall have the authority to levy a special assessment against the Units and the Owners thereof to raise such needed funds. Any special assessment levied by the Board of Directors pursuant to the provisions of this Section shall be payable at such times and in such installments as the Board of Directors shall determine. Each Unit shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this Section. Any special assessment (except regarding the power to assess specially pursuant to Section 44-3-80(b) of the Act for repair or reconstruction of casualty damage to or destruction of all or a part of the Condominium) which would cause the average total of special assessments levied in one fiscal year to exceed two hundred (\$200.00) per Unit, shall be approved by a majority of the total Association vote prior to becoming effective.

Section 7. Effect of Non-Payment of Assessments: Remedies of the Association.

(a) In the event that any member of the Association shall fail to pay, within ten (10) days after the date the same is due and payable, any annual or special assessment, any other charge, or any installment of any annual or special assessment or other charge, which is payable by him to the Association, the entire amount of such assessment or other charge, including the portion thereof which would otherwise be payable in installments, may be declared by the Board of Directors to be immediately due and payable in full to the Association. As more fully provided in § 44-3-109 of the Act, all such amounts so declared by the Board of Directors to be due and payable in full to the Association shall be secured by the lien of the Association on every

Unit owned by the delinquent member, which lien shall bind such Unit or Unit(s) in the hands of the then Owner, and his heirs, devisees, successors and assigns.

(b) All amounts which the Board of Directors shall declare to be due and payable shall bear interest from the date of delinquency at the lower of the rate of ten (10%) percent per annum or the highest rate permitted by law, and the Association may bring legal action against the member of the Association personally obligated to pay the same, or foreclose its lien upon the Unit or Unit(s) of such member, in either of which events such member shall also be liable to the Association for all costs and reasonable attorneys' fees actually incurred which the Association shall incur in connection with the collection of such delinquent amounts.

(c) Any Member of the Association who is not current in the payment of Assessments or other charges, or is otherwise not in good standing with the Association, shall not be entitled to vote on any matters coming before the Members for a vote.

(d) Allocation of Liability for Common Expenses.

(i) Except as provided below, or elsewhere in the Act or Condominium Instruments, the amount of all Common Expenses shall be assessed equally against all the Units.

(ii) The Board of Directors shall have the power to levy special assessments against Units 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 of Directors to exercise its authority under this Paragraph shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Paragraph.

a. Any Common Expenses benefiting less than all of the Units or significantly disproportionately benefiting all Units may be specially assessed equitably among all of the Units which are benefited according to the benefit received. Except for expenses for maintenance, repair or replacement of Limited Common Elements, which may be specially assessed, expenses incurred for the maintenance, repair or replacement of the Area of Common Responsibility, shall not be specially assessed.

b. 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 or Units may be specially assessed against such Unit or Units.

ARTICLE VII

INSURANCE

Section 1. General. 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. 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. In the alternative, 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 of Directors, 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 Board of Directors 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 insurance coverage for the Association shall be written in the name of the Association as trustee for itself, each of the Owners, and the Mortgagees of Owners, if any. It shall be the duty of the Board of Directors at least every two (2) years to conduct an insurance review to determine if the policy in force is adequate to meet the needs of the Association and to satisfy the requirements of Section 44-3-107 of the Act, as amended. Such responsibility may be performed, and shall be deemed reasonably performed, by the Board requesting the Association's insurance agent to verify that insurance policies in existence meet the needs of the Association and satisfy the requirements of Section 44-3-107 of the Act, as amended.

(a) The Board of Directors 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. 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 Unit Owners' 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 of Directors, 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 non renewal without at least thirty (30) days prior notice in writing to the Board of Directors and all Mortgagees of Units;

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

(vi) the deductible amount per occurrence for coverage required by the Act shall not exceed one thousand dollars (\$1,000.00).

(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 Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(d) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees. Each Unit Owner shall notify the Board of Directors of all structural improvements made by the Unit Owner to his or her Unit. Any Unit 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 of Directors within thirty (30) days after the purchase of such insurance. Such Owner shall also promptly notify, in writing, the Board of Directors in the event such policy is canceled.

(e) In addition to the insurance required hereinabove, 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 no 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 consistent with the best business judgment of the Board of Directors, 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 of Directors must sign any checks written on the reserve account; and

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

(f) Insurance carried by the Association as a Common Expense shall not be required to include: (1) any part of a Unit which is not depicted on the original Survey and Floor Plans; or (2) any part of a Unit that was not included as part of the collateral for the initial loan made for the initial purchase of the Unit, 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 Unit 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 Unit Owner shall furnish a copy of such insurance policy or policies to the Association. In the event that any such Unit Owner fails to obtain insurance as required by this subparagraph, the Association may purchase such insurance on behalf of the Unit Owner and assess the cost thereof to the Unit Owner, to be collected in the manner provided for collection of assessments under Paragraph 10 hereof.

Section 2. 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. 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 the deductible pertaining to his or her Unit, if any. If any Owner or Owners fail to pay the deductible when required under this subparagraph, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to Paragraph 8 of this Declaration; provided, however, where the deductible is for insurance required under the Act, no Owner shall be assigned more than one thousand dollars (\$1,000.00), or such higher amount as authorized by the Act, as the cost of the deductible for any one occurrence.

Section 3. Payment of Claims to Delinquent Owners. Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of assessments owed to the Association under Paragraph 10 hereof, then the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Unit Owner.

ARTICLE VIII

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 percent (80%) of the Unit Owners, including the Owner or Owners of any damaged Unit or Units, vote not to proceed with the reconstruction and repair of the structure, the Board of Directors or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each 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 Unit Owner with respect to the distribution of proceeds to any such Unit.

Section 1. Cost Estimates. Immediately after a fire or other casualty causing damage to the Condominium, the Board of Directors 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 of Directors determines to be necessary.

Section 2. 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 of Directors, 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 . If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board of Directors.

Section 3. Floor Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the Floor Plans and specifications under which the Condominium was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original Floor Plans and specifications are approved by the Board of Directors. To the extent insurance proceeds are available, the Association may reconstruct or repair Owner improvements damaged as a result of fire or other casualty.

Section 4. 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 Unit Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Condominium was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

Section 5. Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Unit Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner 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 of Directors.

ARTICLE IX

ARCHITECTURAL CONTROL, USE RESTRICTIONS AND LEASING

In order to provide for the maximum enjoyment of the Condominium by all of the Owners and Occupants thereof and to provide protection for the value of the same, the use of the Units shall be restricted to, and shall be only in accordance with, the following provisions:

Section 1. During Declarant Control. During the time in which the Declarant has the right to appoint directors and officers of the Association under the Bylaws there shall be no Architectural Control Committee and all encroachments onto the Common Elements or Limited Common Elements, exterior change, alteration or construction (including painting and landscaping), and any erection, placement or posting of any object, sign, clothesline, speaker, playground equipment, light, fountain, flag, or thing on the exterior or roof(s) of the buildings, in any windows (except window treatments), or on any Limited Common Elements or any Common Elements, must receive the prior written approval of the Declarant. Granting or withholding such approval shall be within the sole discretion of the Declarant. All references in the Condominium Instruments to the

Architectural Control Committee or ACC shall refer to the Declarant during the period the Declarant has the right to appoint the officers and directors of the Association.

Section 2. After Declarant Control. After such time as the Declarant's rights to appoint officers and directors of the Association as provided in the Bylaws has expired, an Architectural Control Committee shall be appointed by the Board of Directors and except for the Declarant, so long as the Declarant or its successors shall own a Unit for sale, 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, clothesline, speaker, playground equipment, light, fountain, flag, or thing on the exterior or roof(s) of the buildings, in any windows (except window treatments), on any Limited Common Elements, or on any other Common Elements, without first obtaining the written approval of the ACC. 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 above, Declarant shall not be required to obtain any approvals under this Paragraph.

Section 3. Use Restrictions.

(a) **Single-Family Use.** All of the Units shall be restricted exclusively to single-family residential purposes only, and no trade of any kind may be conducted in or from a Unit or any part of the Condominium. Notwithstanding the foregoing, however, nothing set forth in this Section 1 shall prohibit: (a) the Declarant from conducting such sales, leasing and promotional activities on any portion of the Condominium as the Declarant shall determine (including, but not limited to, using any Unit as a model home and a sales office); or (b) the Owner of any Unit from using such Unit as an office, provided that such use does not (i) create regular customer or client traffic to and from such Unit (ii) does not give rise to objectionable sounds or smells, and (iii) no sign, logo, symbol or nameplate identifying such business is displayed anywhere on such Unit. Further, the maximum number of Occupants in a Unit shall be limited to two (2) people per bedroom in the Unit, as such bedrooms are depicted on the original Plat and Floor Plans. "Occupancy" for purposes hereof, shall be defined as staying overnight in a Unit for a total of more than thirty (30) days, either consecutive or non-consecutive, in any calendar year. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto.

(b) **Alteration of Units.** No Owner or Occupant may make any alteration within a Unit which involves connecting to Common Element pipes, lines, conduits and/or other apparatus for access to common utilities without prior written ACC approval.

(c) **Prohibited Activities.** No noxious or offensive activity shall be conducted on any Unit. Each owner of any Unit, his family, tenants, guests and invitees, shall refrain from any act or use of his Unit which could reasonably cause embarrassment, discomfort, annoyance or nuisance to any other resident or residents of any other Unit.

(d) Nuisances. No nuisance shall be permitted upon or within any Unit. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any Unit.

(e) Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any portion of the Condominium, except that a reasonable number of dogs, cats, or other household pets (not in excess of 2) may be kept provided they are kept in accordance with the duly adopted Rules and Regulations of the Association, and provided further, they are not kept, bred or maintained for any commercial purpose, and do not constitute a disturbance to neighbors, as determined in the sole discretion of the Board of Directors. Pets must be on leash at all times and accompanied by an Owner when outdoors.

(f) Signs. No sign of any kind or character shall be erected or displayed to the public on any portion of the Condominium without the prior written consent of the Board of Directors, except for customary name and address signs and one "for sale" sign advertising a Unit for sale, which shall be not larger than three square feet. The restriction herein stated shall include the prohibition of placement of any sign within any Unit in a location from which the same shall be visible from the outside. In the event any sign is placed on a Unit or on the Common Elements in violation of this section, the responsible party shall be subject to a fine as set forth below.

(g) Antennas and Satellite Dishes. Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Condominium, including the Unit or Limited Common Elements; provided, however, that the Association shall have the right to erect, construct and maintain such devices. The following shall apply to all Unit Owners:

(i) No transmission antenna, of any kind, may be erected anywhere on the Condominium, including the Units, without written approval of the Board of Directors or the Architectural Control Committee.

(ii) No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one meter in diameter shall be placed, allowed or maintained upon the Condominium, including the Units and the Limited Common Elements.

(iii) DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, both as may be amended from time to time.

In the event of a transfer of the Unit which includes a satellite dish or antenna, the Grantee shall assume all responsibility for the satellite dish or antenna and shall comply with this Declaration, the Bylaws and the rules and regulations regarding satellite dishes and antennas, including, but not limited to, those requirements relating to maintenance and removal of satellite dish or antenna.

(h) Window Air-Conditioners. No air-conditioner shall be installed in any window of any Unit, nor shall any air-conditioner be installed on any Unit so that the same protrudes through any exterior wall of such Unit.

(i) Subdivision of Units. No Unit may be further subdivided into any smaller Unit.

(j) Removal of Trees. Except during initial construction of a Unit, no trees shall be removed from the Common Elements without the prior written approval of the Board of Directors. The Board of Directors, in its discretion, may adopt and promulgate rules and regulations regarding the preservation of trees and other natural resources and wildlife upon the Common Elements.

(k) Storage. No lumber, materials, bulk materials, refuse or trash shall be kept, stored, or allowed to accumulate on any portion of the Condominium except building materials during the course of construction, maintenance or repair of any approved structure by the Declarant. Trash, garbage or other waste shall not be permitted to remain in public view except on days of trash collection. All containers or other equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. If a central trash collection area is designated by the Association, then these areas will be under the control of the Association and all members will abide by the current regulations regarding the use of these trash enclosures.

(l) Utility Pipes. No water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained above the surface of the ground. Easements are reserved for sewers, drainage and utility installations and their maintenance. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage, or interfere with the installation and maintenance of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements.

(m) Enforcement by Members. Any violations of the above-stated Restrictions must be rectified by the violator within twenty-four (24) hours of receipt of notice from the Declarant or the authorized representative of the Association; otherwise the Owner(s) of the Units(s) which is/are in violation shall be subject to fines in such amounts as may be established by the Board of Directors beginning twenty-four (24) hours after receipt of said notice, and continuing until rectified, and said fines shall constitute liens against the subject Unit(s) until paid. The decision of the Board of Directors regarding imposition of a fine shall be final and shall not be subject to appeal or further review.

(n) Parking. If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's Unit is obstructing the flow of traffic, is parked on any grassy area or otherwise creates a hazardous condition, no notice shall be required and the Board or agent of the Association may have the vehicle towed immediately. If a vehicle is towed in accordance with this paragraph, 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 such towing. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather

than exercise its authority to tow and the Board may impose additional rules and regulations governing parking at the Condominium.

Section 4. Leasing. In order to preserve the character of the Condominium as predominantly owner-occupied, and to comply with the eligibility requirements for financing in the secondary mortgage market, leasing of Units shall be governed by the restrictions imposed by this Paragraph. Except as provided herein, the leasing of Units shall be prohibited.

(a) **General.** Owners desiring to lease their Units may do so only if they have applied for and received from the Board of Directors either a "leasing permit" or a "hardship leasing permit." Such a permit, upon its issuance, will allow an Owner to lease his or her Unit provided that such leasing is in strict accordance with the terms of the permit and this Paragraph. The Board of Directors shall have the authority to establish conditions as to the duration and use of such permits consistent with this Paragraph. All leasing permits and hardship leasing permits shall be valid only as to a specific Unit Owner and Unit and shall not be transferable between either Units or Unit Owners (including a subsequent Owner of a Unit where a permit was issued to the Owner's predecessor in title).

(b) **Leasing Permits.** An Owner's request for a leasing permit shall be approved if current, outstanding leasing permits have not been issued for more than twenty-five percent (25%) of the total Units (excluding Units owned by the Declarant) in the Condominium. A leasing permit shall be automatically revoked upon the happening of any of the following events: (1) the sale or transfer of the Unit to a third party (excluding sales or transfers to (a) an Owner's spouse, (b) a person cohabitating with the Owner, and (c) a corporation, partnership, company, or legal entity in which the Owner is a principal); (2) the failure of a Unit Owner to lease his or her Unit within ninety (90) days of the leasing permit having been issued; or (3) the failure of a Unit Owner to have his or her Unit leased for any consecutive ninety (90) day period thereafter. If current leasing permits have been issued for more than twenty-five percent (25%) of the total Units (excluding Units owned by the Declarant), no additional leasing permits shall be issued (except for hardship leasing permits) until the number of outstanding current leasing permits falls below twenty-five percent (25%) of the total Units (excluding Units owned by the Declarant) in the Condominium. Owners who have been denied a leasing permit shall automatically be placed on a waiting list for a leasing permit and shall be issued the same if they so desire when the number of current outstanding leasing permits issued falls to twenty-five percent (25%) or less of the total Units (excluding Units owned by the Declarant) in the Condominium. The issuance of a hardship leasing permit to an Owner shall not cause the Owner to be removed from the waiting list for a leasing permit.

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

hardship, and (5) whether previous hardship leasing permits have been issued to the Owner. A "hardship" as described herein shall include, but not be limited to the following situations: (1) a Unit Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six (6) months from the date that the Unit was placed on the market, sell the Unit except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner dies and the Unit is being administered by his or her estate; and (3) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Unit. Hardship leasing permits shall be valid for a term not to exceed one (1) year. Owners may apply for additional hardship leasing permits. Hardship leasing permits shall be automatically revoked if during the term of the permit, the Owner is approved for and receives a leasing permit.

(ii) Leasing Provisions. Leasing which is authorized, pursuant to permit, hereunder shall be governed by the following provisions:

a. Notice. At least seven (7) days prior to entering into the lease of a Unit, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.

b. General. 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 Units or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Unit. The Owner must provide the lessee copies of the Declaration, 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.

c. Liability for Assessments, Use of Common Elements, and Compliance with Declaration, Bylaws, and Rules and Regulations. Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(1) Compliance with Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and

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

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

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

(3) Liability for Assessments. When a Unit Owner who is leasing his or her Unit fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other

charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

d. Applicability of this Paragraph. Notwithstanding the above, this Paragraph shall not apply to any leasing transaction entered into by the Declarant, the Association, or 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, and they shall be permitted to lease without obtaining a permit.

ARTICLE X

MAINTENANCE OF UNITS AND EASEMENT AREAS

Section 1. Maintenance and Repair of Units, Stoops and Patios. Except as herein below provided, the Owner of each Unit shall be obligated to maintain and repair the interior of his Unit, which shall be defined as the area inside the planes of the vertical unfinished surface of the sheetrock comprising the interior walls of each Unit and the horizontal plane of the uppermost unfinished floor of a Unit and the lowermost unfinished surface of the ceiling of a Unit. All exteriors of all Units, including roofs, roof joists, foundations, exterior walls, shutters, woodwork and all Stoops and Patios (but excluding all drainage structures as provided in Section 4 hereof) shall be maintained by the Association. In no event shall any change be made to the exterior appearance of any Unit (including, without limitation, painting and the application of any brick, stucco, paneling or other siding), unless such change has been first approved in writing by the ACC. The ACC shall have the right to adopt rules for the placement of any items on the Stoops and Patios, and all items placed on the Stoops and Patios must comply with the terms of such rules. In addition, each Unit Owner shall have the responsibility: (a) to keep in a neat, clean and sanitary condition any Limited Common Elements serving his or her Unit(s); (b) to perform his or her responsibility in such manner so as not to unreasonably disturb other Persons in other Units; and (c) to promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible.

Section 2. Maintenance of Easement Areas. The Owner of the Unit to which each Easement Area is annexed shall be obligated to keep and maintain any portion of the Easement Area enclosed within a fence erected in accordance with this Declaration in a neat, sanitary and attractive condition which is satisfactory to the Board of Directors. Such maintenance shall include, without limitation, cutting the grass, weeds and other vegetation, removing dead trees, shrubs and other plants and pruning and otherwise maintaining all plants, shrubbery, trees, flowers, bushes, grass, ivy and other foliage as may be planted in and on the Easement Area pursuant to the exercise of the easement rights set forth hereinabove. The Association shall be responsible for maintaining all portions of the Easement Areas appurtenant or adjacent to any Units located outside any fence erected in accordance with this Declaration.

Section 3. Fences. The Owner of each Unit shall have the right to erect on the Common Elements a fence to enclose all or any part of the Patio that is annexed to his Unit. All

fences which are installed to enclose all or any portion of a Patio must be constructed and installed within such area adjacent to the Patio in accordance with design standards, regulations and criteria established by the ACC.

In no event shall any fence be erected pursuant to the provisions of this Section 3 unless the design of such fence shall conform to the standardized design which shall be so maintained in effect by the ACC or which shall be prevailing in the Condominium.

In the event that the Owner of any Unit shall elect to erect any such fence pursuant to the provisions of this Section 3, the Owner of the Unit to which such fence is annexed shall be responsible for the repair, maintenance and replacement of such fence.

Section 4. Failure to Maintain. In the event that the Owner of any Unit shall fail to properly maintain those portions of the Unit for which he is responsible, under the terms and provisions of this Article X, the Board of Directors shall have the right, exercisable by it or through its agents or employees, and after giving the Owner of such Unit at least five (5) days notice and an opportunity to correct the unsatisfactory condition, to enter upon the Unit, Stoop or Patio and/or Basement Area, as applicable, and correct the unsatisfactory condition. The Owner of the Unit upon which, or upon the Stoop, Patio, or Easement Area attached or annexed to which, such maintenance work is performed by the Association (or its agents or employees) shall be personally liable to the Association for all direct and indirect costs as may be incurred by the Association in connection with the performance of such maintenance work, and the liability for such costs shall be secured by all of the liens, and shall be subject to the same means of collection, as are the assessments and charges provided for in Article VI of this Declaration. In addition, all such costs shall be paid to the Association by such Owner at the same time as the next due Annual Assessment payment, as provided in Section 4 of Article VI of this Declaration, or at such earlier time, and in such installments, as the Board of Directors shall determine.

Section 5. Party Walls.

(a) **General Rules of Law to Apply.** Each wall built as a part of the original 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 Section, 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 benefited 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.

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(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 therefore 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.

ARTICLE XI

AMENDMENT

The terms, provisions, covenants and restrictions of this Declaration may be amended upon the approval of such amendment by the affirmative vote, written consent or any combination if affirmative vote and written consent of: (a) Unit Owners to which two-thirds (2/3) of the votes in the Association pertain; and (b) Declarant, if Declarant then has an unexpired option to add any Additional Property to the Condominium. During any such time as the Declarant has the right to control the Association, the right to amend this Declaration shall be otherwise restricted as provided in O.C.G.A. §44-3-93. Declarant may unilaterally amend this Declaration to the extent required in order to meet the requirements of HUD or VA for providing Mortgage financing for the Units.

Any amendment to the terms, provisions, covenants or restrictions of this Declaration shall become effective only upon the recording in the Deed Records of DeKalb County, Georgia, of an instrument certified by the incumbent Secretary of the Association, which shall: (a) set forth such amendment; and (b) certify that the amendment has been duly approved as required herein.

The matters set forth in such instrument shall be presumed to be true and accurate and the amendment which is set forth in such instrument shall be effective, unless it shall be determined by a court of competent jurisdiction that the matters certified to in such instrument are not true and accurate.

Each person who shall own any Unit, by acceptance of a deed or other conveyance thereto, and by acceptance of such ownership, and by taking record title thereto, and each holder of a Mortgage upon any portion of any Unit, by acceptance of such Mortgage, thereby agrees that the terms, provisions, covenants and restrictions of this Declaration may be amended as provided in this Article XI.

ARTICLE XII

MORTGAGEE'S RIGHTS

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

- (i) by act or omission seek to abandon or terminate the Condominium;
- (ii) change the pro rata interest or obligations of any individual Unit for the purpose of (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (2) determining the pro rata share of ownership of each Unit in the Common Elements;
- (iii) partition or subdivide any Unit in any manner inconsistent with the provisions of this Declaration;
- (iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (the granting of easements or licenses, as authorized herein, shall not be deemed a transfer within the meaning of this clause); or
- (v) use hazard insurance proceeds for losses to any portion of the 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 section 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 Article.

(b) Where the Mortgagee holding a first Mortgage of record, a secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the secondary purchase money Mortgage is the seller of the Unit) or other purchaser of a Unit obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, 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 Unit 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) Upon written request to the Association, identifying the name and address of the holder and the Unit number or address, any Eligible Mortgage Holder, or insurer or guarantor of a first mortgage on a Unit, will be entitled to timely written notice of:

(i) any proposed amendment of the Condominium Instruments effecting a change in (a) the boundaries of any Unit or the exclusive easement rights appertaining thereto; (b) the interests in the Common Elements or Limited Common Elements appertaining to any Unit or the liability for Common Expenses appertaining thereto; (c) the number of votes in the Association appertaining to any Unit; or (d) the purposes to which any Unit or the Common Elements are restricted;

(ii) any proposed termination of the Condominium;

(iii) 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;

(iv) 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 Unit Owner of any other obligation under the Condominium Instruments which is not cured within sixty (60) days;

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

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

(e) 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.

(f) Notwithstanding anything to the contrary herein contained, the provisions of this Declaration 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; or
- (ii) take a deed or assignment in lieu of foreclosure; or
- (iii) sell, lease, or otherwise dispose of a Unit acquired by the Mortgagee.

(g) No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

(h) Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of any mortgagee encumbering such Owner's Unit.

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

(j) Construction of this Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Condominium Instruments or Georgia law for any of the actions set forth in this Article.

ARTICLE XIII

DISCLOSURES

Section 1. Acknowledgments.

Each Owner and Occupant acknowledge the following:

- (a) The Condominium is located adjacent to thoroughfares which could be improved or widened in the future.
- (b) The views from an Owner's Unit can change over time due to among other things, additional development and the removal or addition of landscaping.
- (c) No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.

(d) No representations are being made regarding which schools may now or in the future serve the Unit.

(e) Since in every neighborhood, there are conditions which different people may find objectionable, it is acknowledged that there may be conditions outside of the Property which an Owner or Occupant finds objectionable and that it shall be the sole responsibility of the Owners and Occupants to become acquainted with neighborhood conditions which could affect the Unit.

(f) No representations are made that the Unit is or will be soundproof or that sound may not be transmitted from one Unit to another.

(g) The Condominium Floor Plans and the dimensions and square footage calculations shown thereon are only approximations. Any Unit Owner who is concerned about any representations regarding the Floor Plans should do his/her own investigation as to the dimensions, measurements and square footage of his/her Unit.

Section 2. Contracts Executed During Declarant Control. All contracts or leases executed by or on behalf of the Association during the period in which the Declarant has the right to appoint the officers and directors of the Association pursuant to Article III, Section 2 of the Bylaws shall contain a termination clause permitting the Association to terminate the contract or lease at any time, without cause and without penalty, upon not more than ninety (90) days' written notice.

Section 3. Services During Declarant Control. Each Owner acknowledges that Declarant and its affiliates may provide services utilized by communities such as this Condominium including, but not limited to, management services. Each Owner consents and agrees that the Association may enter into service contracts with Declarant and its affiliates.

ARTICLE XIV

MISCELLANEOUS

Section 1. Failure of Enforcement. In the event that the Association shall fail to enforce the compliance with any of the provisions of this Declaration by the Owner of any Unit, then the Owner of any other Unit shall have the right to file an action in the Superior Court of DeKalb County, Georgia, seeking an order from such Court requiring that the Association enforce such compliance; provided, however, in no event shall the Board of Directors, or any officer of the Association, or any of their agents, be personally liable to anyone on account of their failure to enforce any of the terms, provisions or restrictions set forth in this Declaration.

Section 2. Waivers. In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision, or agreement. The acceptance of performance of anything required to be performed with knowledge of the breach

of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

Section 3. Duration. This Declaration, and all of the terms, easements, provisions, liens, charges, restrictions and covenants set forth herein, shall run with and bind the Property, and any Additional Property which has been submitted to the Declaration, shall be and shall remain in effect, and shall inure to the benefit of, and be enforceable by, the Association, and by any Owner of any Unit, their respective legal representatives, heirs, successors and assigns, perpetually.

Section 4. Notices. Any notice required to be sent to any member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the U.S. Mail, postage prepaid, addressed to the member to whom it is intended, at the address which such member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of any Unit owned by such member. The date of service shall be the date of mailing.

Section 5. Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if any provision of this Declaration or the application thereof to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

Section 6. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the Unit(s) owned by said Person, to enforce any liens created by this Declaration.

Section 7. Successors to Declarant. In no event shall any person or other entity succeeding to the interest of the Declarant by operation of law or through purchase of the Declarant's interest in all or any portion of the Property or Additional Property at foreclosure, sale under power or by deed in lieu of foreclosure, be liable for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of the Declarant.

Section 8. SECURITY. THE ASSOCIATION OR THE DECLARANT 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 NEITHER THE ASSOCIATION NOR THE DECLARANT IS A PROVIDER OF SECURITY AND NEITHER PARTY SHALL HAVE

A DUTY TO PROVIDE SECURITY ON THE CONDOMINIUM. FURTHERMORE, THE ASSOCIATION DOES NOT GUARANTEE THAT NON-UNIT OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE PROPERTY AND COMMIT CRIMINAL ACTS ON THE PROPERTY NOR DOES THE ASSOCIATION GUARANTEE THAT CRIMINAL ACTS ON THE PROPERTY WILL NOT BE COMMITTED BY OTHER UNIT OWNERS OR OCCUPANTS. 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 UNIT OWNER. NEITHER DECLARANT NOR THE ASSOCIATION SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SAFETY MEASURES UNDERTAKEN.

Section 9. Dispute Resolution. Prior to filing a lawsuit against the Association, the Board, or any officer, director, or property manager of the Association, a Unit Owner or Occupant must request and attend a hearing with the Board of Directors. Any such request shall be in writing and shall be personally delivered to any member of the Board of Directors 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.

Section 10. Unit Keys. Each Owner, by acceptance of a deed to a Unit, agrees to provide the Association with a key to the Unit and the security alarm code, if any, to be used by the Association for maintenance, emergency, security or safety purposes as provided in this Declaration. Neither the Declarant nor the Association shall be liable for any loss or damage due to its holding such key, or use of such key for the purposes described above and each Unit Owner shall indemnify and hold harmless the Declarant, the Association and its officers and directors against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon the Declarant, the Association or its officers or directors in connection with any action, suit, or other proceeding (including settlement of any such action, suit or proceeding) brought by the Unit Owner or the Unit Owner's family, tenants, guests, employees, invitees, or licensees against the Declarant, the Association, its officers or directors arising out of or relating to its holding or use of such key for the purposes described above.

Section 11. Right of Action. All Owners hereby acknowledge and agree that the Association shall not be entitled to institute any legal action against anyone on behalf of any or all of the Owners which is based on any alleged defect in any Unit or the Common Elements, or any damage allegedly sustained by any Owner by reason thereof, but rather, that all such actions shall be instituted by the Person(s) owning such Units or served by such Common Elements or allegedly sustaining such damage. Notwithstanding the above, once the Declarant no longer has the right to appoint and remove directors and officers, as set forth in Article III, Section 2 of the Bylaws, the Association Board of Directors may negotiate the resolution of any alleged defect(s) in the Common Elements and Area of Common Responsibility on behalf of the Unit Owners and shall

have the right and authority to settle and release on behalf of any and all of the Unit Owners claims, causes of action, damages and suits involving the same. Any such settlement and release shall bind all Unit Owners and their successors and assigns.

Section 12. Easements in Favor of Additional Property Owner. There is reserved to Declarant and its successors and assigns, including any purchaser of the Additional Property, a non-exclusive easement upon, across, above and under all Property within the Condominium (including the Common Elements and Limited Common Elements) for purposes of developing the Additional Property whether or not it is developed as part of the Condominium. In accordance therewith and until such time as Declarant or its successors record an amendment to the Declaration effecting the submission of the Additional Property (which is not required), then it shall be expressly permissible for Declarant and its successors and assigns to maintain and carry on, upon such portion of the Condominium as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient or incidental to Declarant's developing the Additional Property whether or not it is developed as part of the Condominium including, but without limitation, the following:

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

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

(c) the right to carry on sales and promotional activities in the community and the right to construct and operate business offices, signs, construction trailers, residences, model Units and sales offices. Declarant may use residences, offices or other Units owned or used by Declarant as model Units and sales offices.

Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at his or her sole expense. This Section shall not be amended without the Declarant's or Declarant's successor's express written consent, so long as any portion of the Additional Property has not been submitted to the Condominium.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized representatives, the day and year above set forth.

Signed, sealed and delivered
in the presence of:

Margaret L. Hobbs
Witness

Janene M. Fine
Notary Public



BENCHMARK/WALDEN LAKE, LLC, a
Georgia limited liability company.

By: Fred J. Schwaemmle, Jr.
Fred J. Schwaemmle, Jr., Manager

By: Ralph Buck Davis
Ralph Buck Davis, Manager

Deed Book 14195 Pg 676

Exhibit "A"

**Legal Description
Submitted Property**

All that tract or parcel of land lying and being in Land Lots 9 of the 16th District District, DeKalb County, Georgia and being shown on that certain plat entitled "Dedication Plat for Walden Lake," prepared by Seiler & Associates, Inc., Keith Seiler, Ga. R.L.S. No. 2388, dated August 14, 2002, last revised September 6, 2002, recorded in Plat Book 130, page 120, DeKalb County, Georgia records,
LESS AND EXCEPT Lots 1 through and inclusive of 19, as shown on said plat.

Deed Book 14195 Pg 677

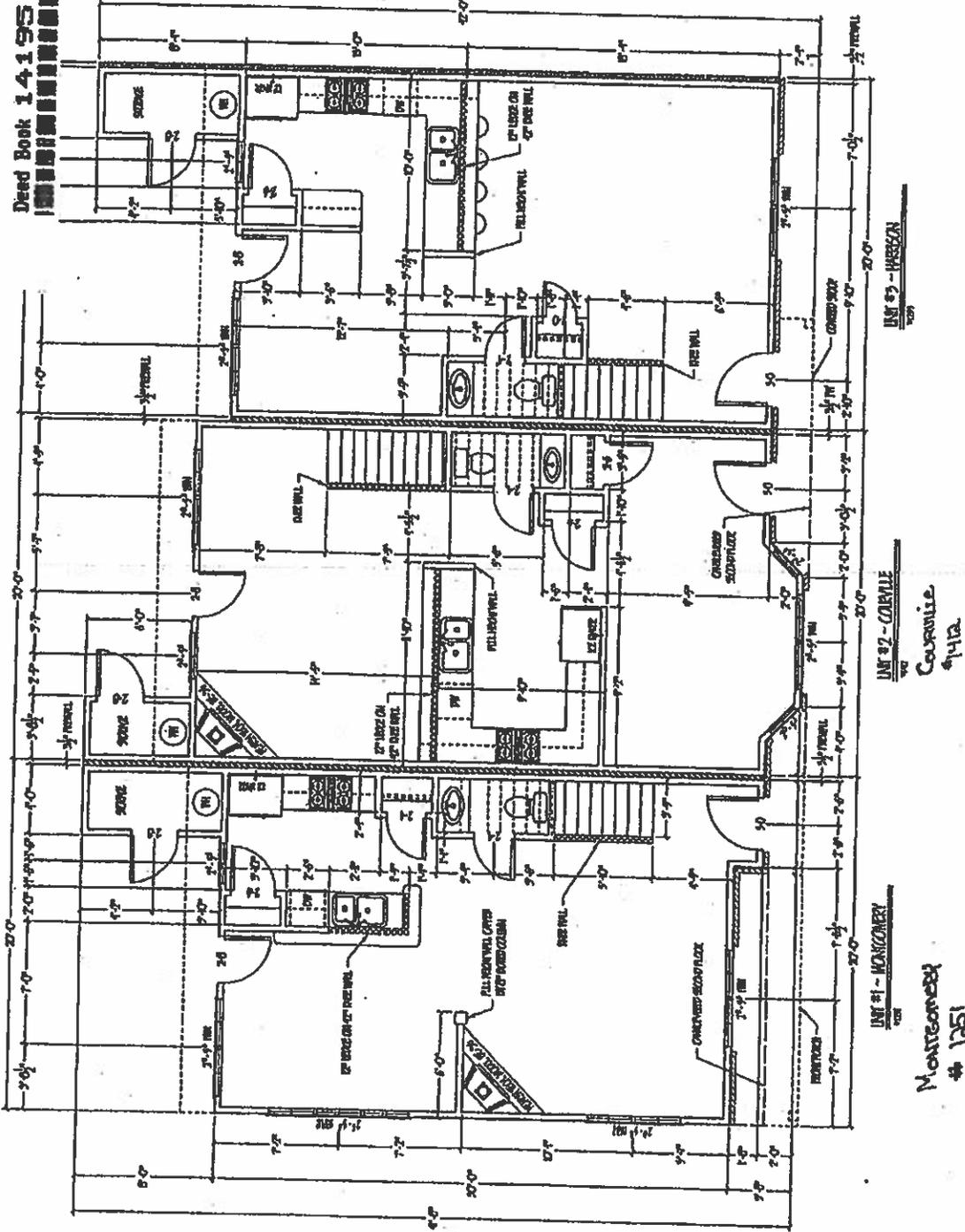
Exhibit "B"
Legal Description

Additional Property

All that tract or parcel of land lying and being in Land Lot 9 of the 16th District, DeKalb County, Georgia and being shown as Lot 1 through and inclusive of Lot 19 on that certain plat entitled "Dedication Plat for Walden Lake," prepared by Seiler & Associates, Inc., Keith Seiler, Ga. R.L.S. No. 2388, dated August 14, 2002, last revised September 6, 2002, recorded in Plat Book 130, page 120, DeKalb County, Georgia records,

Deed Book 14195 Pg 678

Deed Book 14-195 Pg 680



10/14

THIS PLAN IS THE PROPERTY OF Tom Cardillo Services. ANY PART OR WHOLE REPRODUCED WITHOUT HIS WRITTEN CONSENT.

Designed by: Tom Cardillo

Tom Cardillo Services
2307 Rockstram Court
Buford, Georgia 30019
(404) 644-3875

TOWNHOMES: TC-1
FOR BRAYSON HOMES

FIRST & SECOND FLOORPLANS
UNITS 1-3

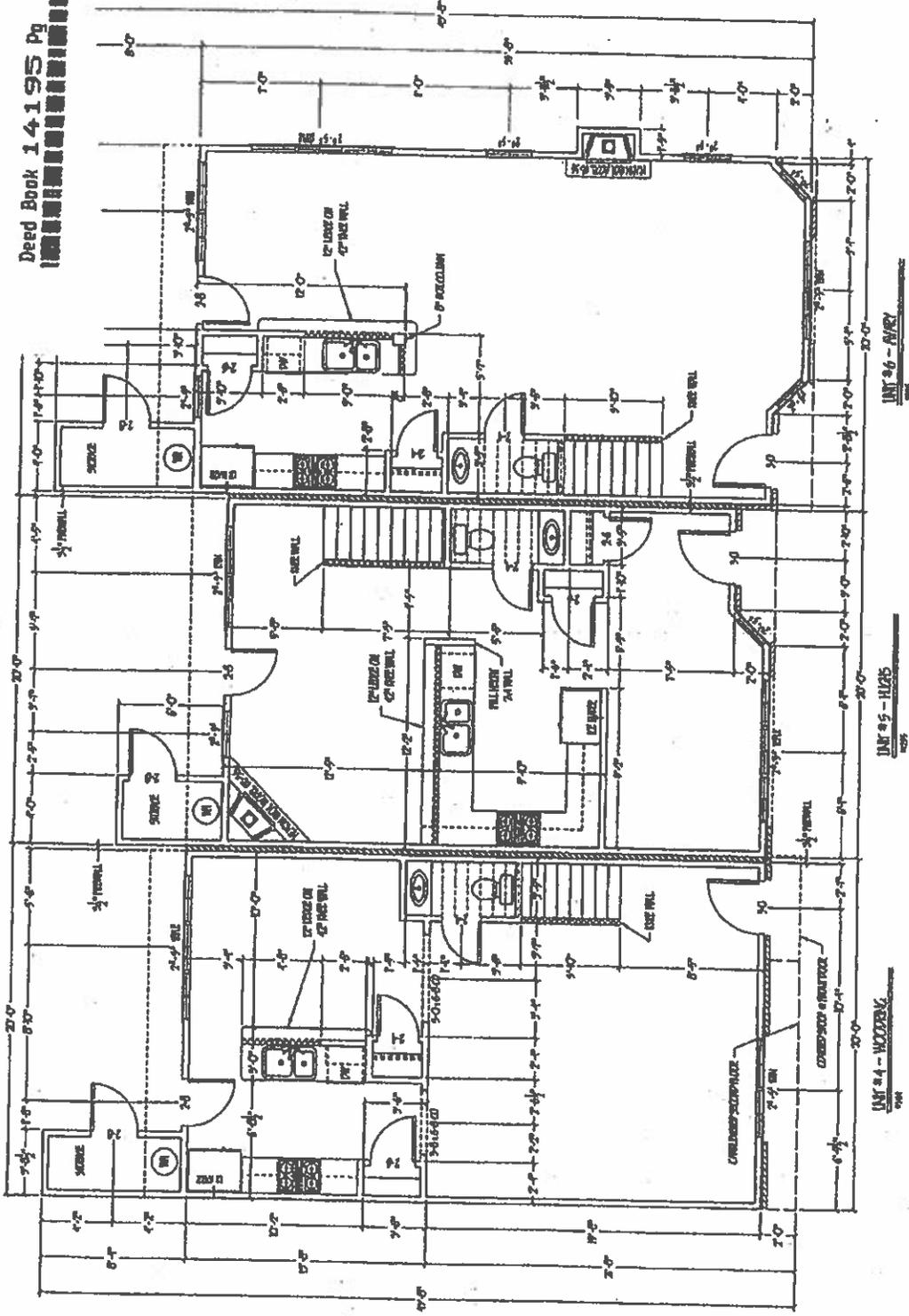
UNIT #1 - MONTGOMERY
1251

UNIT #2 - CORVALL
1112

UNIT #3 - HERRICK
1001

1/4" = 1'

13



THIS PLAN IS THE PROPERTY OF
Tom Cardillo Services
 IT MAY NOT BE USED OR REPRODUCED
 WITHOUT HIS WRITTEN CONSENT.

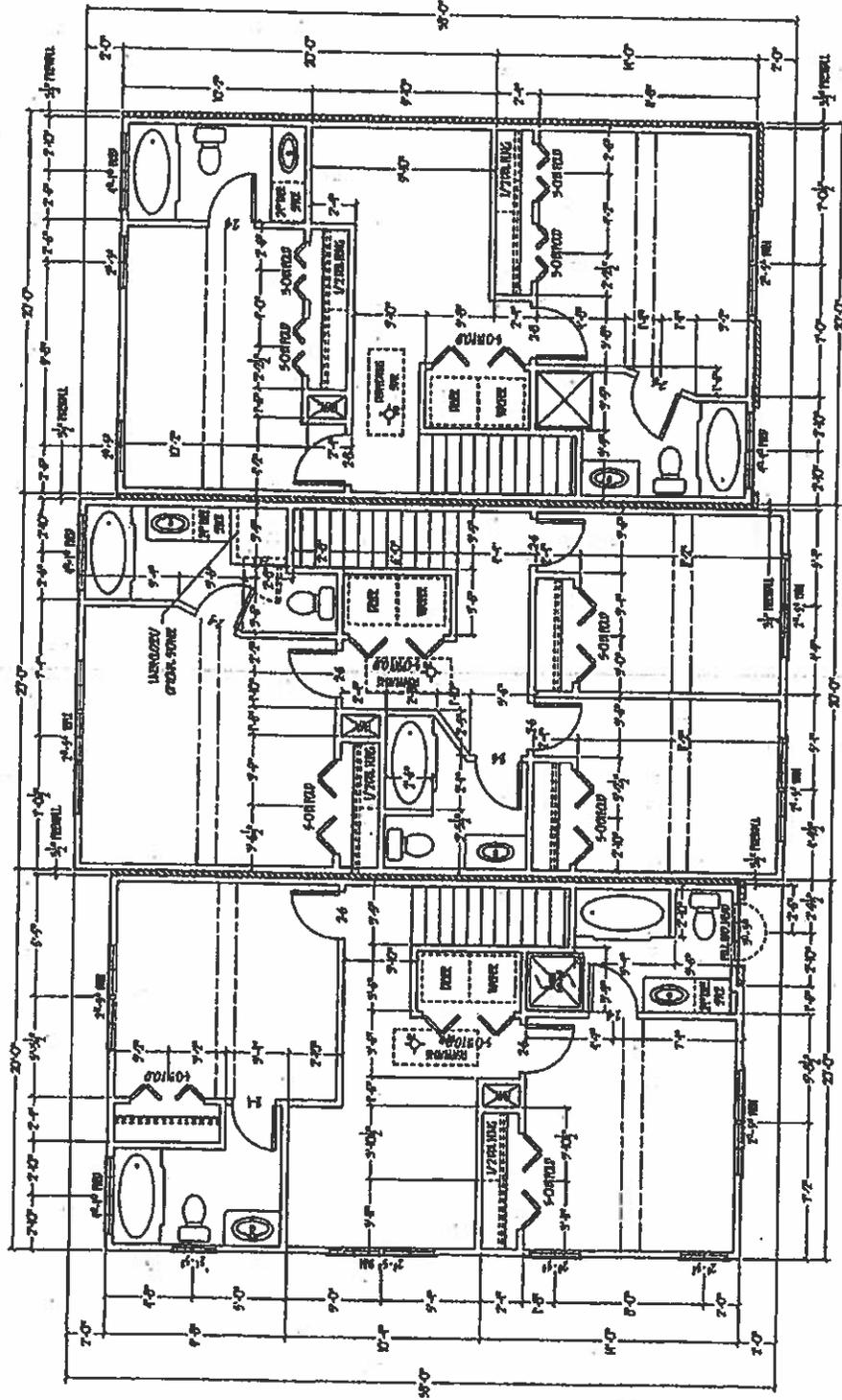
Designed by
Tom Cardillo

Tom Cardillo Services
 2307 Rockstram Court
 Buford, Georgia 30519
 (404) 644-3875

**TOWNHOMES: TC-1
 FOR BRAYSON HOMES**

**FIRST & SECOND FLOOR PLANS
 UNITS 4-6**

1/4" = 1'
 M

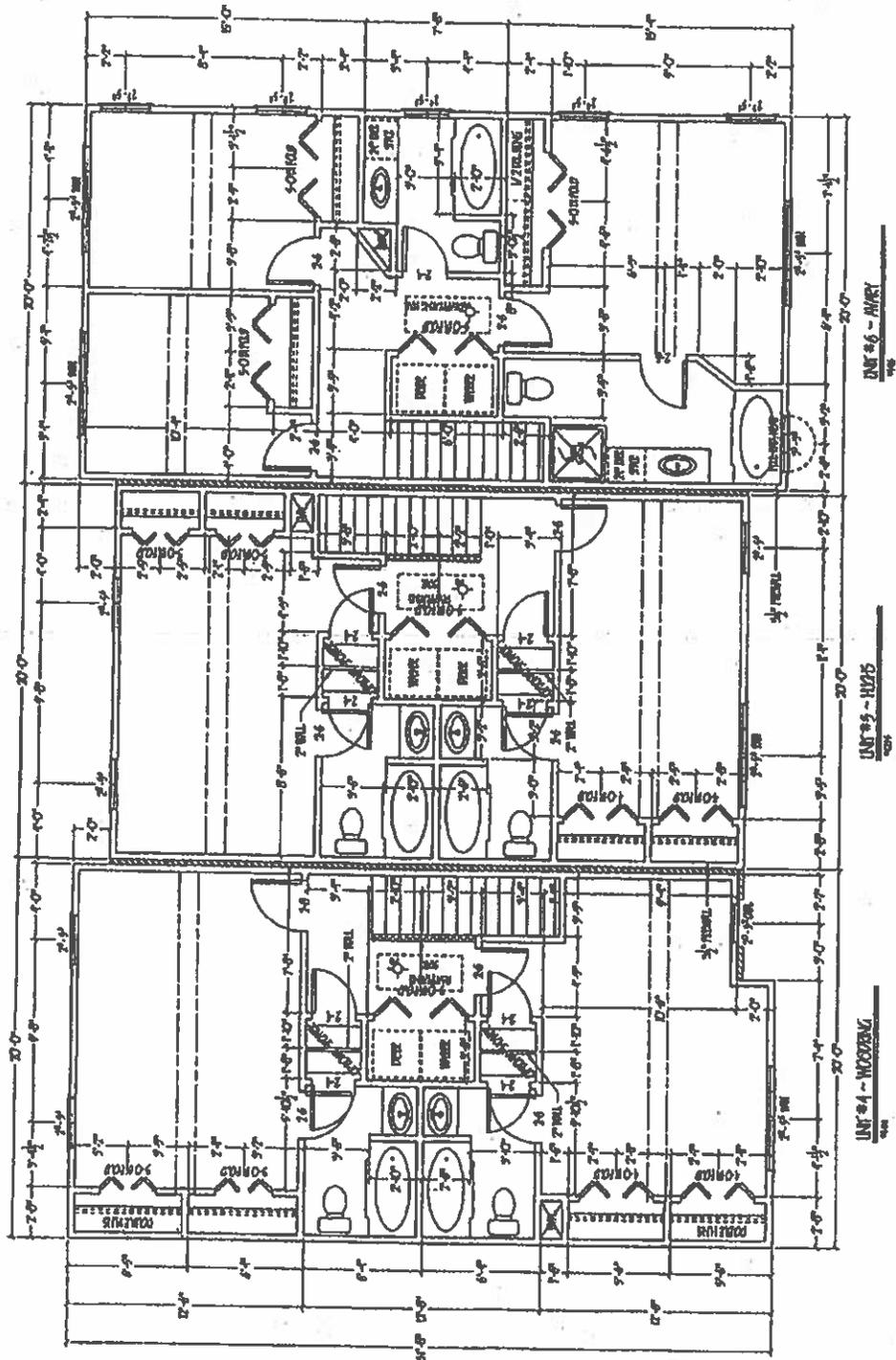


UNIT #3 - HERRON

UNIT #2 - CORBIE

UNIT #1 - HENNINGER

NOTE:
ALL DIMS ARE FROM FINISH WALL UNLESS OTHERWISE NOTED.



UNIT #6 - APT#1

UNIT #5 - APT#2

UNIT #4 - APT#3

NOTE:
ALL DIMENSIONS OF PERIMETER WALL UNLESS OTHERWISE NOTED.

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