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JAUNITA HICKS
CLERK OF SUPERIOR COURT

DECLARATION OF CONDOMINIUM
FOR
THE TERRACES AT PEACHTREE, A CONDOMINIUM

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

Attorneys

Two Midtown Plaza, 15th Floor
1349 West Peachtree Street
Atlanta, Georgia 30309
(404) 885-9215

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DECLARATION OF CONDOMINIUM

FOR

THE TERRACES AT PEACHTREE, A CONDOMINIUM

THIS DECLARATION is made on the date set forth below by TERRACES AT PEACHTREE, L.P., a Georgia limited partner (hereinafter referred to as "Declarant");

WITNESSETH:

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

WHEREAS, a plat related to the Condominium prepared by Watts & Browning Engineers, Inc., dated October 23, 1995, last revised March 11, 1998, was filed in Condominium Plat Book 11 Page(s) 20 & 21, Fulton County, Georgia records; and

WHEREAS floor plans relating to the Condominium prepared by Niles Bolton Associates, Inc. were filed in Condominium File Cabinet No. 2, Folder No. 345 of the Fulton County, Georgia records; and

WHEREAS, Declarant desires to subject the real property described in Exhibit "A" hereto, including the improvements thereof, to the provisions of this Declaration and to the Georgia Condominium Act;

NOW, THEREFORE, Declarant hereby declares that the real property described in Exhibit "A" of this Declaration, including the improvements located thereon, is hereby submitted and made subject to the form of ownership set forth in the Georgia Condominium Act, and is hereby subjected to the provisions of this Declaration. By virtue of the recording of this Declaration, said property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to 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 real property subject to this Declaration, and shall be binding on all persons having any right, title or interest in all or any portion of the real property subject to this Declaration, their respective heirs, legal representatives, successors, successors-in-title and assigns, and shall be for the benefit of all owners of the property subject to this Declaration.

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DECLARATION OF CONDOMINIUM

FOR

THE TERRACES AT PEACHTREE A CONDOMINIUM

1. NAME.

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

2. DEFINITIONS.

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

a) Act shall mean the Georgia Condominium Act, O.C.G.A. § 44-3-70, et seq. (Michie 1982), as such act may be amended from time to time.

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

(c) Area of Common Responsibility shall mean and refer to the Common Elements, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any other person or entity become the responsibility of the Association.

(d) Article or Articles of Incorporation shall mean the Articles of Incorporation of The Terraces at Peachtree Condominium Association, Inc., which have been filed with the Secretary of State of the State of Georgia.

(e) Association shall mean The Terraces at Peachtree Condominium Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

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

(g) Bylaws shall mean the Bylaws of The Terraces at Peachtree Condominium Association, Inc., attached to this Declaration as Exhibit "E" and incorporated herein by this reference.

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

(i) Commercial Units shall mean Unit CU- I and Unit CU-2 as shown on the Floor Plans for the Condominium recorded in the Fulton County, Georgia records.

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

(k) Community-Wide Standard shall mean the standard of conduct, maintenance, or other activity generally prevailing within the Condominium. Such standard may be more specifically determined by the Board of Directors and the Architectural Control Committee.

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

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

(n) Declarant shall mean Terraces at Peachtree, L.P., a Georgia limited partnership, its respective successors and assigns.

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

(p) Floor Plans shall mean the floor plans for The Terraces at Peachtree, a Condominium, filed in the condominium file cabinet of the Fulton County, Georgia records.

(q) 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.

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

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

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

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

(v) Owner shall mean the record title holder of a Unit within the Condominium, but shall not include a Mortgage Holder.

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

(x) Residential Unit shall mean all Units except for the Commercial Unit as defined above.

(y) Survey shall mean the plat of survey for The Terraces at Peachtree, a Condominium, filed in the condominium plat book of the Fulton County, Georgia records.

(z) Unit shall mean that portion of the Condominium intended for individual ownership and use as more particularly described in this Declaration and shall include the undivided ownership in the Common Elements assigned to the Unit by this Declaration.

3. LOCATION, PROPERTY DESCRIPTION, PLATS AND PLANS.

The Condominium subject to this Declaration and the Act is located in Land Lot 111, of the 17th District of Fulton County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. A plat of survey and floor plans relating to the Condominium have been filed in the Fulton County, Georgia records. The Survey and Floor Plans are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

The Condominium consists of a 12-story residential building with 8 floors containing Units, one lobby floor and 3 levels containing parking. There are amenities located outside and inside the building including a lobby, pool, lounge/club room, outdoor patio area off the lounge/club room, weight room, bike rack in the parking area, laundry room with two (2) washing machines and two (2) dryers, and a small office.

So long as Declarant owns a Unit, Declarant reserves the right, but shall have no obligation, to make improvements and changes to all or part of the Common Elements and the Units owned by Declarant (other than changes to the location of Unit boundaries unless expressly permitted herein), including, without limitation, addition and realignment of parking spaces, renovation and installation of changes to utility systems and facilities, rearrangement and installation of security and refuse facilities, work relating to building exteriors, extension of the drives and utility lines and pipes located on the Condominium, reconfiguration, and refurbishment of the lobby, and relocation of the laundry room.

4. UNITS AND BOUNDARIES.

The Condominium is divided into ninety-six (96) separate Residential Units, the Limited Common Elements, and the Common Elements. Each Unit consists of a dwelling and its appurtenant percentage of undivided interest in the Common Elements as set forth in Exhibit "B" attached to this Declaration and by this reference incorporated herein. 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 Survey and the Floor Plans. Each Unit includes that part of the structure which lies within the following boundaries:

(a) Vertical Boundaries. The parametrical or vertical boundaries of each Unit shall be the vertical planes of the unfinished interior surfaces of the sheet rock comprising the interior walls of the Unit extended to their intersections with each other and the upper and lower horizontal boundaries of the Unit. Entry doors and exterior glass surfaces, including, but not limited to, windows and glass doors, serving the Unit shall be included within the boundaries of the Unit. Heating and air conditioning systems serving a single Unit (including any part of any such system located outside the boundaries of the Unit), all duct work for such heating and air conditioning systems shall be part of the Unit.

(b) Horizontal Boundaries. The upper horizontal boundary of each Unit located in the Condominium is the plane formed by the unfinished interior surface of the wallboard, sheet rock, or other material comprising the ceiling enclosing the uppermost story of the Unit. The lower horizontal boundary of each Unit located in the Condominium is the plane formed by the upper surface of the unfinished sub flooring on which the lowermost story of the Unit is constructed.

If any chutes, flues, ducts, conduits, wires, pipes or other apparatus lies partially within and partially outside of the designated boundaries of the Unit, any portion thereof which 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.

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

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

5. COMMON ELEMENTS.

The Common Elements consist of all portions of the Condominium not located within the boundaries of a Unit. The Common Elements include, without limitation, certain utilities, fencing, paving, walls, retaining walls, landscaped areas, security cameras, underground parking areas, the mail room, trash rooms, trash chutes, trash chute lobbies, the lobby of the building, the foundation, roof, and exterior walls of the building, the elevators, elevator shafts, elevator lobbies, mechanical and electrical rooms and the fire control room, the lounge in the lobby of the building, the outdoor patio area off the lounge in the lobby of the building, the exercise room, the bike rack on parking level P3, and the shop and shop/storage area on the parking level P1.

Ownership of the Common Elements shall be by the Unit Owners as tenants-in-common. The percentage of undivided interest in and to the Common Elements attributable to each Unit is set forth on Exhibit " B. " 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.

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.

6. **LIMITED COMMON ELEMENTS.**

(c) The Limited Common Elements located on the Condominium and the Units to which they are assigned are:

- (i) Units that have a balcony, patio or terrace adjoining and connected to a Unit are assigned that balcony, patio or terrace as a Limited Common Element.
- (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) The mailbox assigned to each Unit is assigned as a Limited Common Element to that Unit.
- (iv) Entry foyers serving one or more Units, as shown on the Floor Plans, are assigned as Limited Common Elements serving the Unit or Units which adjoin and connect to the entry foyer.
- (v) Units may be assigned one (1) or more parking spaces which are assigned on Exhibit "C" attached hereto and incorporated herein by this reference and shown on the Floor Plans as Limited Common Element(s) assigned to the Unit (parking spaces may be initially assigned or reassigned by amendment to this Declaration as provided in subparagraphs (b) and (c) below).
- (vi) Units may be assigned a storage space which are assigned on Exhibit "D" attached hereto and incorporated herein by this reference and shown on the Floor Plans as a Limited Common Element assigned to specific Units (storage spaces may be initially assigned or reassigned by amendment to this Declaration as provided in subparagraphs (b) and (c) below).

(d) The Association's Board of Directors, without need for a membership vote, is hereby authorized to assign and to reassign Limited Common Elements, provided that any such assignment or reassignment shall be made in accordance with the provisions of Section 44-3-82(b) and (c) of the Act. 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 reassigning the Limited Common Element, which amendment shall be executed by the Owner or Owners making such application. Such amendment shall be delivered and become effective as provided in Section 44-3-82 of the Act. An amendment to assign a Common Element, not previously assigned as a Limited Common Element shall not require the approval of the Association or the Board, if the request is made by the Declarant, or its affiliate. Such a request made by any other Person shall require the Board's consent.

(e) For so long as Declarant owns any Unit primarily for the purpose of sale, Declarant shall have the right to sell to Unit Owners one (1) or more parking spaces (in addition to the one (1) parking space assigned to each Unit) and storage spaces to be assigned as Limited Common Elements pursuant to subparagraphs (a) and (b) above and subject to availability. The proceeds of the sale of storage spaces and additional parking spaces as Limited Common Elements shall belong to the Declarant.

7. ASSOCIATION MEMBERSHIP AND ALLOCATION OF VOTE.

All Unit Owners, by virtue of their ownership of a fee or undivided fee interest in any Unit in the Condominium, excluding Persons holding such interest under a Mortgage, are members of The Terraces at Peachtree Condominium Association, Inc., and, except as otherwise provided herein or in the By-Laws, shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Declaration and in accordance with the By-Laws. Subject to the provisions of the Condominium Instruments, each Owner shall be entitled to one (1) equally weighted vote for each Unit in which he or she holds the interest required for membership.

8. ALLOCATION OF LIABILITY FOR COMMON EXPENSE

(a) Except as provided below, or elsewhere in the Act or Condominium Instruments, the amount of all Common Expenses shall be assessed against all the Units in accordance with the percentage of undivided interest in the Common Elements appurtenant to the Unit as shown on Exhibit "B".

(b) The Board of Directors shall have the power to assess specially pursuant to this Paragraph and to Section 44-3-80 (b) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board of Directors to exercise its authority under this Paragraph shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Paragraph in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Paragraph.

(i) 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. However, expenses incurred for the maintenance, repair, or replacement of the Area of Common Responsibility (except for expenses for maintenance, repair, or replacement of Limited Common Elements) shall not be specially assessed.

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

(c) Any and all expenses incurred for the maintenance, repair and/or replacement of the Limited Common Element balconies and Limited Common Element patios adjoining a Unit may be specifically assessed against the Unit served thereby.

(d) The Condominium currently is served by a common water meter. The Board shall have the authority to install sub-meters and assess individual Unit utilities usage charges, including a right to add a charge for the cost of overhead for such sub-metering, against individual Units and/or to install separate utility meters for the Units.

9. ASSOCIATION RIGHTS AND RESTRICTION

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;

(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 By-Laws provisions, and rules and regulations by the imposition of reasonable monetary fines and suspension of use and voting privileges as provided in Section 44-3-76 of the Act, as amended;

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

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

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

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

(h) to close permanently or temporarily any portion of the Common Elements (excluding the Limited Common Elements) with thirty (30) days prior notice to all Owners, except that, in emergency situations requiring a temporary closing, prior notice shall not be required so long as notice is given within three (3) days after the closing explaining the reason for the closing. Notwithstanding the above, the Owners may re-open closed Common Elements by a majority vote of the total Association vote, cast at a duly called special or annual meeting; and

(i) 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 under subparagraph 8(b) (ii) above.

10. ASSESSMENTS.

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

(b) Creation of the Lien and Personal Obligation For Assessment. Each Owner of any Unit, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular 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, interest, costs, and reasonable attorney's fees actually incurred, and if the Board so elects, rents, in the maximum amount permitted by the Act, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance; provided, however, liability of a Mortgagee shall be governed by Paragraph 19(b) below.

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

or inconvenience or discomfort arising from the Association's performance of its duties. The lien provided for herein shall have priority as provided in Section 44-3-109 of the Act.

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

(i) If any monthly installment of annual assessments or any part thereof is not paid in full by the tenth (10th) day of the month or if any other charge is not paid within ten (10) days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner and interest at the rate of ten (10%) percent or such higher rate as may be permitted by the Act shall accrue from the due date.

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

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

(iv) If assessments and other charges or any part thereof remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board of Directors, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the By-Laws, the Act and Georgia law and suspend the Owner's and/or Occupant's right to vote and the right to use the Common Elements; provided, however, the Board may not limit ingress or egress.

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

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

(d) Computation of Operating Budget and Assessment. It shall be the duty of the Board at least twenty-one (21) days prior to the beginning of the Association's fiscal year to prepare a budget covering the estimated costs of operating the Condominium during the coming year. The Board shall cause the budget and notice of the assessments to be levied against each Unit for the following year to be delivered to each member at least thirty (30) days prior to the Association's annual meeting. The budget and the assessment shall become effective unless disapproved at a duly called and constituted annual meeting of the Association by a vote of a majority of the total Association vote; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

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

(e) Special Assessments. In addition to the annual assessment provided for in subparagraph (b) above, the Board may, at any time, and in addition to any other rights it may have, levy a special assessment against all Owners, notice of which shall be sent to all Owners. Any special assessment (except as provided in Paragraph 8(b) regarding the power to assess specially pursuant to Section 44-380(b) of the Act and Paragraph 12(b) herein, regarding repair or reconstruction of casualty damage to or destruction of all or part of the Condominium) which would cause the average total of special assessments levied in one fiscal year to exceed two hundred dollars (\$200.00) per Unit that must be approved by a majority of the total Association vote prior to becoming effective.

(f) Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the

Board and included within the budget and assessment as provided in subparagraph (d) of this Paragraph. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

Notwithstanding any other provisions of this Declaration, during the time the Declarant appoints the directors and officers of the Association pursuant to Article 111, Section 2 of the Bylaws, Declarant (i) may collect a non-refundable contribution to the capital fund of the Association from the initial purchaser of each Unit in the amount of two (2) months of the general assessments, and (ii) shall not be required to prepare a capital budget, set any other capital contribution, or otherwise collect amounts for capital reserves. No mortgagee who takes title to a Unit through foreclosure shall be obligated to pay the capital contribution referenced herein.

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

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

11. INSURANCE.

The Association shall obtain and maintain at all times, as a Common Expense, insurance as required by Section 44-3-107 of the Act, as amended, and as required herein. To the extent reasonably available at reasonable cost, the Association's insurance policy shall cover any of the following types of property contained within a Unit, regardless of ownership: (a) fixtures, improvements and alterations that are a part of the building or structure; and (b) appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping. If such insurance is not reasonably available, the Association's insurance policy may exclude improvements and betterments made by the Unit Owner and may exclude the finished surfaces of perimeter and partition walls, floors, and ceilings within the Units (i.e., paint, wallpaper, paneling, other wall covering, tile, carpet and any floor covering; provided, however, floor covering does not mean unfinished hardwood or unfinished parquet flooring).

All insurance purchased by the Association pursuant to this Paragraph shall run to the benefit of the Association, the Board 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. At least every two (2) years the Board of Directors shall 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 property. If "all risk" coverage is not reasonably available at reasonable cost, the Board shall obtain, at a minimum, fire and extended coverage, including coverage for vandalism and malicious mischief, in like amounts. The Board shall use reasonable efforts to obtain policies that will provide the following:

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

(ii) any "other insurance" clause contained in the master policy shall expressly exclude individual 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 five thousand (\$5,000.00) dollars.

(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 consonant 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, if any, 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 any part of a Unit which is not depicted on the original plats and plans, nor shall the Association include public liability insurance for individual Owners for liability arising within the Unit.

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

(h) Every 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.

(i) Insurance Deductibles. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected owner's portion of the total cost of repair. 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 (\$1,000.00) dollars, or such higher amount as authorized by the Act, as the cost of the deductible for any one occurrence.

12. REPAIR AND RECONSTRUCTION.

In the event of damage to or destruction of all or any part of the Condominium as a result of fire or other casualty, unless eighty (80%) percent of the 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 institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Unit Owner with respect to the distribution of proceeds to any such Unit.

(a) 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.

(b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board 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 10(e). 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.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the 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 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.

(d) Encroachments. Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the 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.

(e) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against 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.

13. ARCHITECTURAL CONTROLS.

(a) During Declarant Control. During the time in which the Declarant has the right to appoint directors and officers of the Association under Article III, Section 2 of 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, antenna, clothesline, light, flag, or thing on the exterior of the building, in any windows (except window treatments as provided herein), 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.

(b) After Declarant Control. After such time as the Declarant's rights to appoint officers and directors of the Association as provided in Article III, Section 2 of the Bylaws has expired, an Architectural Control Committee shall be appointed by the Board of Directors and except for the Declarant, no Owner, Occupant, or any other person may make any encroachment onto the Common Elements or Limited Common Elements, or make any exterior change, alteration, or construction (including painting and landscaping), nor erect, place or post any object, sign, antenna, clothesline, light, flag, or thing on the exterior of the building, in any windows (except window treatments as provided herein), on any Limited Common Elements, or on any other Common Elements, without first obtaining the written approval of the ACC; except that a mezuzah smaller than one and one-half inches by five inches (1 1/2" x 5") and reasonable, seasonal decorative lights displayed between Thanksgiving and January 15, may be placed on the front door and/or front door frame of a Unit. 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. The Declarant shall not be required to obtain any approvals under this Paragraph.

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 (including, but not limited to installation of washers and dryers). No Owner or Occupant shall make any interior modifications to any structural or load bearing portions of a Unit. Interior modifications may only be made in accordance with any construction guidelines as may be adopted by the ACC. All building code requirements must be complied with and necessary permits and approvals secured for any modifications.

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

The Board, subject to this subparagraph, may allow such encroachments on the Common Elements and Limited Common Elements as it deems acceptable.

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

(ii) Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance of such change, modification, addition, or alteration, except with regard to certain improvements to Limited Common Elements as provided in Paragraph 17 below. In the discretion of the Board or ACC, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

(iii) Limitation of Liability. Review and approval of any application pursuant to this Paragraph is made on the basis of aesthetic considerations only, and neither the Declarant, the Board of Directors or the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, the ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction or modifications to any Unit.

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

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

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

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

the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction.

14. USE RESTRICTIONS.

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

In addition to the following use restrictions, the Board of Directors may adopt rules and regulations in accordance with the terms hereof and as specified in the By-Laws.

(a) Use of Units.

(i) Residential Unit. Each Residential Unit shall be used primarily for residential purposes, and no trade or business of any kind may be conducted in or from a Residential Unit or any part of the Condominium, including business uses ancillary to a primary residential use, except as provided herein. The Owner or Occupant residing in a Residential Unit may conduct such ancillary business activities within the Residential Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Residential Unit; (ii) the business activity is limited to those items defined as "Home Occupations" in the City of Atlanta Zoning Ordinance, and the business activity conforms to all other zoning requirements for the Condominium; (iii) the business activity does not involve visitation of the Residential Unit by an unreasonable number of clients, customers, employees, suppliers or other business invitees; (iv) the business activity does not increase traffic in the Condominium other than deliveries by couriers, express mail carriers, parcel delivery services and other such delivery services; (v) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (vi) the business activity is consistent with the primarily residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium, as may be determined in the sole discretion of the Board of Directors; and (vii) the business activity does not result in a materially greater use of Common Element facilities or Association services.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore.

(ii) Commercial Units. Each Commercial Unit shall be used only for such commercial or business purposes permitted by applicable zoning ordinance and use restrictions, provided such commercial or business activity does not constitute a nuisance or hazardous or offensive use, or threaten the security or safety of other residents of the Condominium, as may be determined in the reasonable discretion of the Board.

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

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

(ii) Relocation of Boundaries. Boundaries between adjoining Units may be relocated only in accordance with the provisions of O.C.G.A. § 44-3-91 and, for so long as Declarant owns a Unit, only with the prior written consent of the Declarant. The Declarant shall have the right to relocate boundaries between Units owned by the Declarant or its affiliates without the approval of the Association, and the Association shall execute the required amendment to the Declaration.

(iii) Subdivision of Units. An Owner may subdivide his Unit only in accordance with the provisions of Section 44-3-92 of the Act and this Declaration and, for so long as Declarant owns a Unit, only with the prior written consent of the Declarant. The Declarant shall have the right to subdivide Units owned by the Declarant or its affiliates without the approval of the Association, and the Association shall execute the required amendment to the Declaration.

Notwithstanding anything to the contrary herein, construction, remodeling and alterations in a Unit may be engaged in only between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday and not on any holidays.

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

There shall be no use of the roof of the Condominium building by the Owners, their family members, guests, tenants or invitees except as to any Limited Common Element roof areas assigned to a

particular Unit. The Association and its agents and contractors shall have access to the roof for performing its maintenance and repair responsibility. No pets are allowed in any of the amenity areas or in the elevators.

(d) Use of Limited Common Elements Including Balconies and Patio. Use of the Limited Common Elements is restricted exclusively to the Owners of the Unit to which such Limited Common Elements are assigned, and said Owner's family members, guests, tenants and invitees. The Limited Common Elements are reserved for exclusive use, but shall not be construed or interpreted to be separate and apart from the Common Elements in general, and the restrictions applicable to the Common Elements shall also apply to the Limited Common Elements. Objects over forty-two (42) inches in height, satellite dishes or antennas, bikes, laundry, garments, towels and objects other than potted plants and patio furniture except as may be authorized by the Board are prohibited from balconies and patios. Penetration of any balcony or patio structure is prohibited.

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

Noxious, destructive or offensive activity shall not be carried on upon the Condominium. No Owner or Occupant of a Unit may use or allow the use of the Unit or any portion of the Condominium at any time, in any way or for any purpose which may endanger the health, unreasonably annoy or disturb or cause embarrassment, or discomfort to other Owners or Occupants, or in such a way as to constitute, in the sole opinion of the Board of Directors, a nuisance, including, without limitation, the use of the Unit or keeping any item within the Unit which would increase the likelihood of insect or pest infestation in the Unit or in any portion of the Condominium. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights.

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

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

(f) Firearms and Fireworks. The display or discharge of firearms or fireworks on the Common Elements or Limited Common Elements is prohibited; provided, however, that the display of lawful firearms on the Common Elements or Limited Common Elements is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common

Elements or Limited Common Elements to or from the Owner's Unit. The term "firearms" includes "B.B." guns, pellet guns, and other firearms; of all types, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A. § 25-10-1, as amended.

(g) Pets. No Owner or Occupant may keep any pets other than a maximum of one (1) dog, cat, or bird, weighing forty-five (45) pounds or less along with smaller generally recognized household pets, such as fish or hamsters, as determined by the Board, on any portion of the Condominium. Depending on the breed and disposition of the dog, larger dogs may be permitted in the Condominium at the sole discretion of the Board of Directors. No Owner or Occupant may keep, breed, or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors or kept unattended outdoors, including on any balcony or patio. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outside a Unit. Any feces left by dogs in the Condominium must be removed by the owner of the dog or the person responsible for the dog.

No dogs are permitted in the lobby of the building. Dogs must be taken inside and outside through the dog entrance on the southeast side of the building and walked through the stairwell to the parking garage elevator lobby. No potbellied pigs may be brought onto or kept at the Condominium at any time. No pit bulldogs or any other dogs determined in the Board's sole discretion to be dangerous dogs may be brought onto or kept on the Condominium at any time. Any pet which exceeds the weight limit set forth above without approval of the Board of Directors, which endangers the health of any Owner or Occupant of any Unit, which creates a nuisance or unreasonable disturbance, or which in any other way violates this Paragraph 14(g) or which, as may be determined in the sole discretion of the Board of Directors, must be permanently removed from the Condominium upon seven (7) days' written notice by the Board of Directors. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet. Any pet which, in the sole discretion of the Board, presents an immediate danger to the health, safety or property of any member of the community may be removed by the Board without prior notice to the pet's owner.

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

(h) Parking. Vehicles must be parked in designated lined, parking spaces only. Certain spaces as depicted in the plans are assigned as Limited Common Elements, exclusively serving a particular Unit. Such assigned spaces are designated Limited Common Elements and may only be used by the Owner or Occupants to whom the spaces are assigned, and their guests and families. The Board may adopt rules regulating the use of all unassigned parking spaces in all areas of the Condominium.

Disabled and stored vehicles are prohibited from being parked on the Condominium. Boats, boat and other trailers, trucks with a load capacity of one (1) ton or more, and recreational vehicles (RV's and motor homes) are prohibited from being parked on the Condominium. Notwithstanding the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors may be allowed temporarily on the paved parking area adjacent to the Condominium building(s) during normal business hours for the purpose of serving any Unit or the Common Elements, subject to the rules and regulations for the paved parking area adopted by the Board of Directors, and provided that no such

vehicle shall be authorized to remain on the Common Elements overnight or for any purpose except serving a Unit or the Common Elements, without the written consent of the Board.

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

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

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's parking space, is obstructing the flow of traffic, is parked on any grassy area, is parked in a space which has been assigned as exclusively serving another Unit, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing activity. 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.

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

(j) Signs. Except as may be required by legal proceedings, and except for signs which may be erected by Declarant related to the development and sale of Units, no signs, advertising posters or billboards of any kind shall be erected, placed, or permitted to remain on the Condominium without the prior written consent of the Declarant or the Architectural Control Committee as set forth in Paragraph 13. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. Signs related to business activities in Units may be erected only with the prior written approval of the Declarant or the Architectural Control Committee as set forth in Paragraph 13.

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

(l) Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Condominium. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Unit. Appropriate outdoor items, such as patio furniture, may be kept on balconies or patios assigned to certain Units as Limited Common Elements.

(m) Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited except with prior written authorization of the Board.

(n) Window Treatments. Unless otherwise approved in writing by the Declarant or the Architectural Control Committee as set forth under Paragraph 13, all Unit windows shall have window treatments and any portion thereof visible from outside the Unit shall be white or off-white in color.

(o) Replacing Carpet with Tile or Hardwood Floor. Other than the Declarant, no Owner, Occupant, or any other person may replace carpeting with a tile, marble, vinyl or hardwood floor, or other hard surfaced flooring material, on the interior of a Unit without first obtaining written approval of the Declarant or the Architectural Control Committee, as applicable, as set forth in Paragraph 13. Among other factors, the Declarant or the Architectural Control Committee, as applicable, may consider whether the change will cause noise to any Unit below which will exceed the average noise level in Units below Units with carpeted floors and that the weight of such proposed flooring is appropriate and will not cause problems to the structure or sub-flooring. The Owner applying for such approval shall provide the Declarant or the Architectural Control Committee, as applicable, with information regarding these factors, as well as other information requested by the Declarant or the Architectural Control Committee regarding the proposed flooring and its effect; provided, however, the noise level requirements shall be considered to be met if the Owner provides a sound transmission test that the proposed flooring will create a noise level less than a standard level set by reasonable regulation of the Declarant or the Architectural Control Committee, as applicable. Notwithstanding the above, at least seventy-five percent (75 %) of the Unit (excluding the kitchen and bathrooms) shall be carpeted unless the flooring is sound proofed so as not to exceed the noise level in Units with carpeted floors.

(p) Antennas. Other than any antenna installed by the Declarant, no transmission antenna, of any kind, may be erected anywhere on the Condominium unless first approved in writing by the Declarant or Architectural Control Committee as required under Paragraph 13. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antennas larger than one (1) meter in diameter may be placed, allowed or maintained upon any portion of the condominium, including a Unit. DBS and MMDS antennas one (1) meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and rules and regulations of the Association authorized by the FCC, both, as may be amended from time to time.

(q) Grilling. The use of outdoor grills in the Condominium building, including without limitation, the balconies and patios, is prohibited.

(r) Abandoned Personal Property. Personal property, other than vehicles as provided for in subparagraph (h) above kept, or allowed to remain for more than twenty-four (24) hours upon any portion of the Common Elements, other than on a Limited Common Element, without prior written Board permission. If the Board determines that a violation exists, then, not less than two (2) days after written notice is placed on the personal property and/or on the front door of the property owner's Unit, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine and shall have no obligation to return, replace or reimburse the owner of the property. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

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

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

(s) Sale Period. Notwithstanding any provisions contained in this Declaration to the contrary, during the period of the sale of the Condominium Units and until the last Unit is sold by the Declarant it shall be expressly permissible for Declarant, its contractors, agents, employees, assigns and representatives, 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 reasonably required, convenient or incidental to the completion and sale or lease of the Condominium Units, including, but without limitation, business offices, signs, model Units and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use the parking facilities on the Condominium for such purposes and to use the Units owned by Declarant as model Units and as offices for the sale of the Condominium Units and related activities.

15. LEASING.

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

(a) Definition. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person or persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or

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

(i) General. Units may be leased only in their entirety; no fraction or portion may be leased without prior written approval of the Board of Directors. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board shall maintain in its files and, upon request, shall provide to any Owner a form which is deemed acceptable. There shall be no subleasing of Units or assignment of leases unless prior written approval is obtained from the Board of Directors. All leases must be for an initial term of not less than one (1) year; provided, however, that the Board shall have the power to allow leases for an initial term of less than one (1) year, on such terms and conditions as the Board may establish, upon a showing by the Owner that such a lease is required to avoid undue hardship to the Owner. Within seven (7) days after executing a lease agreement for the lease of a Unit, the Unit Owner shall provide the Board of Directors with a copy of the lease and the name of the lessee and all other people occupying the Unit. The Unit Owner must make available to the lessee copies of the Declaration, By-Laws, and the rules and regulations.

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

- (A) Compliance With Declaration, By-Laws, and Rules and Regulation. The lessee shall comply with all provisions of the Declaration, By-Laws, 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 compliance with the foregoing. The Owner shall cause all Occupants of his or her Unit to comply with the Declaration, By-Laws, 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 violation of the Declaration, By-Laws, and rules and regulations adopted pursuant hereto. Unpaid fines shall constitute a lien against the Unit.

Any violation of the Declaration, By-Laws, 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, By-Laws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Unit.

- (B) 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 of Directors, 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 Paragraph 10 herein 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.

(c) Inapplicability to Declarant and Holders of First Mortgage. This Paragraph 15 shall not apply to any leasing transaction entered into by Declarant or by the holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

16. SALE OF UNITS.

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

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

17. MAINTENANCE RESPONSIBILITY.

(a) By the Owner. Each Owner shall have the obligation to maintain and keep in good repair all portions of his or her Unit. This maintenance responsibility shall include, but not be limited to the following: all glass surfaces (excluding exterior cleaning of all glass surfaces except sliding glass doors or windows accessible from a Limited Common Element balcony or patio assigned to a Unit), windows, window frames, casings and locks (including caulking of windows); all doors, doorways, door frames, and hardware that are part of the entry system of the Unit (except for periodic painting or staining of the exterior surface of entry doors and door frames facing the hallway of the Condominium); all portions of the heating and air conditioning system, including the air conditioning compressor serving the Unit and the fan coil; and all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether

located within or without a Unit's boundaries (including all gas, electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits, or other apparatus serving only the Unit).

Some Units contain interior support beams which are load bearing beams. No Owner or Occupant shall do any act which jeopardizes or impairs the integrity of such beams.

In addition, each Unit Owner shall have the responsibility:

(i) To keep in a neat, clean and sanitary condition any Limited Common Elements serving his or her Unit including, without limitation, balconies and patios.

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

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

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

(b) By the Association. The Association shall maintain and keep in good repair as a Common Expense the "Area of Common Responsibility," which includes the following:

(i) all Common Elements, and Limited Common Elements except that all costs and expenses associated with the maintenance and repair or replacement of Limited Common Element balconies, patios and terraces shall be assessed against the Unit Owner to whom the Limited Common Element is assigned under Paragraphs 8(b)(i) and 8(c); including, but not limited to, the exterior of the Condominium building and roof, except that all costs and expenses associated with the maintenance and repair or replacement of Limited Common Element balconies, patios and terraces.

(ii) periodic cleaning of exterior window surfaces (except the sliding glass doors or windows accessible from a Limited Common Element, balcony or patio assigned to a Unit) on a schedule to be determined by the Board of Directors; and

(iii) periodic painting and/or staining of exterior surfaces of entry doors and door frames facing the hallway of the Condominium, on a schedule to be determined by the Board of Directors.

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Elements) shall be performed at the sole

expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

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

The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. Such repair and subsequent cleaning shall be performed based on a reasonableness standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

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

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

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

(d) Measures Related to Insurance Coverage.

(i) The Board of Directors, upon resolution, shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Condominium which are the maintenance responsibility of the Unit Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Condominium, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring Owners to install smoke detectors; requiring Owners to make improvements to the Owner's Unit; and such other measures as the Board may reasonably require so long as the cost of such work does not exceed three hundred (\$300.00) dollars per Unit in any twelve (12) month period.

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

18. 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 Paragraph, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

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

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

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

(e) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Paragraph, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (10) days after written request therefore by the Board of Directors, 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 under the provisions of this Paragraph.

19. 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;
- (iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (the granting of easements or licenses, as authorized herein, shall not be deemed a transfer within the meaning of this clause); or
- (v) use hazard insurance proceeds for losses to any portion of the Condominium (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such portion of the Condominium.

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

(b) Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to judicial or non-judicial 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 the Owner of the foreclosed Unit, 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) Any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

(e) Notwithstanding anything to the contrary herein contained, the provisions of Paragraphs 15 and 16 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.

20. GENERAL PROVISIONS.

(a) Security. The Association shall use its best efforts to provide measures or take actions which directly or indirectly improve safety on the Condominium, including such measures as periphery fencing, controlled access to parking deck and parking elevators, and television monitoring of portions of the common elements. These measures may be changed from time to time in the sole discretion of the Association. However, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges that risk of crime always exists and agrees that the Association, by taking such measures, cannot guarantee security. It shall therefore be the responsibility of each Owner to protect his or her person and property. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken, and each Owner agrees not to pursue any claims, causes of action, or damages against the Association, and its officers, directors and agents arising out of or related to the failure to provide adequate security or ineffectiveness of safety measures undertaken.

(b) Dispute Resolution. Prior to filing a lawsuit against the Association, the Board, or any officer, director, or property manager of the Association, 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.

(c) Use and Conveyance of Commercial Unit(s) by Declarant to Association.

(i) Declarant may, but is not required to, give the Unit Owners the right to use the Commercial Unit(s). The duration, terms, and conditions of such usage are at the discretion of the Declarant and may be unilaterally changed by Declarant from time to time. If Unit Owners and/or Association are given the right by Declarant to use any Commercial Unit(s) owned by Declarant, then the Association shall be responsible for paying for insurance, property taxes, and the cost of maintaining and repairing such Commercial Unit(s).

(ii) The Declarant may, but shall not be obligated to, transfer or convey to the Association the Commercial Unit(s) which are subject to the terms of this Declaration. Any such conveyance shall be accepted by the Association, and the Commercial Unit(s) shall thereafter be maintained by the Association. Declarant shall not be required to make any improvements whatsoever to the Commercial Unit(s) to be conveyed and accepted pursuant to this subparagraph.

(d) Right of Action. Each Owner hereby acknowledges and agrees that the Association shall not be entitled to institute or provide financial assistance for any legal or administrative action against anyone on behalf of any or all of the Unit Owners which is based on any alleged defect in any Unit or the Common Elements, or any damage allegedly sustained by any Unit Owner by reason thereof, but rather, that all such actions shall be instituted by the Unit Owners owning such Units or served by such Common Elements or allegedly sustaining such damage.

(e) Conversion Condominiums; No Warranties. The Condominium is the conversion of an existing apartment building to the condominium form of ownership and is not new construction. The Declarant has owned the Condominium building for a short period of time, having purchased it in May 1998. The Declarant does not represent to be intimately familiar with the building and Property and intends to make no more than cosmetic renovations to the Units and Common Elements of the Condominium building. Thus, other than the Declarant's Statement of the Condition of the Property given to the first purchaser of each Unit in the Disclosure Package required pursuant to O.C.G.A. Section 44-3-111, the Declarant makes no representations or warranties with regard to the condition of the Condominium building including, without limitation, the structural components, mechanical systems, and electrical systems.

(f) Storage Spaces. Neither the Declarant nor the Association shall be held liable for loss or damage to any property placed or kept in a storage space in the Condominium. Each Owner or Occupant

with use of a storage space who places or keeps property in such storage space does so at his or her own risk.

(g) Unit Key. Each Owner, by acceptance of a deed to a Unit, agrees to provide the Association with a key to the Unit to be used by the Association for pest control as provided in Paragraph 22(f) of this Declaration and for maintenance, emergency, security or safety purposes as provided in Paragraph 9(a) of 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 Declaration, 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.

21. EMINENT DOMAIN.

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

22. EASEMENTS.

(a) Use and Enjoyment. Each Unit Owner and Occupant shall have a right and easement of use and enjoyment in and to the Common Elements (including the right of access, ingress and egress to and from his or her Unit over those portions of the Condominium designated for such purpose), and such easement shall be appurtenant to and shall pass with the title to such Unit, subject to (i) the rights of the Unit Owners to the exclusive use of the Limited Common Elements assigned to their respective Units; (ii) to the right of the Association to control the use and enjoyment of the Common Elements as provided by the terms of this Declaration including, but not limited to, the right of the Association to suspend voting and use privileges as provided herein; and (iii) to the right of the Association to have access to the Limited Common Elements assigned to a Unit to discharge its rights and obligations, under the Condominium Instruments, including without limitation, the maintenance responsibility of the Association.

(b) Support. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

(c) Encroachments. The Units and Common Elements shall be subject to easements of encroachment as set forth in the Act.

(d) Utilities. To the extent that the sprinkler system or any utility line, pipe, wire, or conduit serving any Unit, Units or the Common Elements shall lie wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit, Units, or the Common Elements shall be burdened with an easement for the use, maintenance, repair and replacement of such sprinkler system, utility line, pipe, wire or conduit, such easement to be in favor of the Unit, Units, or Common Elements served by the same and the Association.

(e) Pest Control. The Association and its duly authorized contractors, representatives, and agents shall have an easement to enter Units for the purpose of dispensing chemicals for the exterminating of insects and pests within the Units and Common Elements. Unit Owners shall either provide a key to the Unit for purpose of such entry or have someone available at such times as are designated by the Board of Directors to allow entry into the Unit for this purpose. The Association shall not be liable for any illness, damage, or injury caused by the dispensing of these chemicals for this purpose.

(f) Community Bulletin Board. As part of the Common Elements maintained by the Association, Declarant and/or the Board shall have the right to erect on the Condominium a bulletin board primarily for the use of Unit Owners in advertising their Units for sale. For so long as the Association desires to maintain this bulletin board, each Unit Owner and his licensed real estate broker and agent may use the Condominium for access, ingress and egress to and from this bulletin board; provided, however, the use of the bulletin board shall be subject to such reasonable nondiscriminatory rules and regulations as may be adopted or promulgated by the Board regulating the size and duration of such advertisements. Declarant or Board may terminate use of this bulletin board entirely at any time, and no property rights of any kind are created hereby.

(g) Declarant Easements.

(i) Parking, Ingress and Egress. The owners of Peachtree Commons Condominiums to the east of The Terraces at Peachtree Condominium have a non-exclusive easement to use and enjoy forty-three (43) parking spaces on the Condominium as set forth in that certain Declaration of Easements, recorded at Deed Book 7498, Page 420, Fulton County, land records. Additionally, Owners of Units in The Terraces at Peachtree Condominium and the owners of units in Peachtree Commons Condominiums have mutual, reciprocal and non-exclusive easements in perpetuity for purposes of ingress and egress, both motor vehicular and pedestrian over, across and through the common driveway lying on the south side of each parcel to and from Biscayne Drive, as described in that certain Declaration of Easements, recorded in Deed Book 7498, Page 420, Fulton County, land records.

(ii) So long as Declarant owns any Unit primarily for the purpose of sale, Declarant and its duly authorized contractors, representatives, agents, and employees shall have: (1) an easement for use of the elevators and other Common Elements and the maintenance of signs, a sales office, a business office, promotional facilities and model Units on the Condominium, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development or sale of the Unit, and (2) a transferable easement on, over, through, under and across the Common Elements and Limited Common Elements for the purpose of making improvements on the Condominium or any portion thereof, for the purpose of installing, replacing, repairing and maintaining all utilities serving the Condominium, and for the purpose of doing all things reasonably necessary and proper in connection therewith, including, without limitation, those items listed in Paragraph 3 above. Declarant shall not be charged any fees or costs for the exercise of these easement rights.

(iii) Declarant shall have an exclusive, perpetual, assignable easement for itself, its agents, successors and assigns over, across and to a certain space on the roof of the Condominium building, which area shall be specified and defined on the Floor Plans of the Condominium, for such purposes as Declarant deems necessary, including, but not limited to, selling, leasing, or assigning such space or a portion thereof for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of telecommunication equipment. Such easement shall include the right of access to and from such easement area.

23. **AMENDMENTS.**

Except where a higher vote is required for action under any other provisions of this Declaration or by the Act, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding (2/3) of the total Association vote. As long as Declarant has the right to appoint the directors and officers of the Association as provided in the Bylaws, any amendment to this Declaration or the Bylaws shall require the written consent of Declarant. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Fulton County, Georgia land records.

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

Notwithstanding the foregoing, Declarant or the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with any applicable state, city or federal law, and/or to bring the Condominium into compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA").

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

24. **SEVERABILITY.**

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

25. **DECLARANT RIGHTS.**

Notwithstanding anything to the contrary herein, and in addition to Declarant's right to appoint and remove officers and directors under Article 111, Section 2 of the Bylaws and other rights set forth herein, Declarant shall have the right, as long as Declarant owns at least one Unit, to conduct such sales

and marketing activities at the Condominium as Declarant deems appropriate for the sale or marketing of any Unit, and Declarant shall have easement rights across the Common Elements to erect reasonable signs and to conduct such other sales and marketing activity as provided herein.

Notwithstanding anything to the contrary herein, Declarant shall also have the right to temporarily or permanently close any portion of the common elements without the consent of the Owners, for repair and renovations thereto.

Declarant shall also have the right, but not the obligation, as long as the Declarant owns at least one Unit, to operate and charge for valet parking in the Condominium using parking spaces not assigned as Limited Common Elements or assigned to Units owned by the Declarant or its affiliates as Limited Common Elements.

26. **PREPARER.**

This Declaration was prepared by Jamie Platt Lyons and Seth G. Weissman, Weissman, Nowack, Curry & Wilco, P.C., Two Midtown Plaza, 15th Floor, 1349 West Peachtree Street, Atlanta, Georgia 30309.

IN WITNESS WHEREOF, Declarant has executed this Declaration this 28 day of May 1998.

DECLARANT: TERRACES AT PEACHTREE, L.P.
a Georgia limited partnership

By: Terrace Heights, Inc. a Georgia
Corporation

By: _____ (SEAL)
Title: _____

[CORPORATE SEAL]

Signed, sealed, and delivered
this 28 day of May,
1998, in the presence of:

WITNESS

NOTARY PUBLIC

[NOTARY SEAL]

re:\terraces\assoc\declaration.5

Notary Public, Fulton County, 0, Georgia
MY Commission Expires October 27, 2001

Exhibit "A"

All that tract or parcel of land lying and being in Land Lot III of the 17th District of Fulton County, Georgia as shown per the survey dated October 23, 1995 for Equity Residential Properties Trust; ERP Operating Limited Partnership; Commonwealth Land Title Insurance Company and First American Financial Life Insurance Company, prepared by Warts & Browning Engineers, Inc., as certified by V. T. Hammond, Registered Land Surveyor No. 2-554, and being more particularly described as follows:

Beginning at a point on the northeasterly right of way of Biscayne Drive (60 foot right of way) a distance of 229.00 feet northwesterly from. The intersection formed by the northeasterly right of way of Biscayne Drive (60 foot right of way) and the northwesterly right of way of Peachtree Road (60 foot right of way) and running thence northwesterly along the northeasterly right of way of Biscayne Drive (60 foot right of way) the following courses and distances: north 67 degrees 07 minutes 02 seconds west a distance of 194.55 feet, thence along the arc of a curve to the left 50.36 feet (said arc having a chord distance of 50.34 feet on a bearing of north 70 degrees 04 minutes 43 seconds west and a radius of 487.191 feet); running thence north 22 degrees 44 minutes 29 seconds east and departing the northeasterly right of way of Biscayne Drive, a distance of 58.88 feet to a point; running thence south 66 degrees 53 minutes 2-5 seconds east a distance of 66.76 feet to a point; running thence: north 27 degrees 43 minutes 51 seconds east a distance of 120.12 feet to a point; running -thence north 65 degrees 39 minutes 31 seconds west a distance of 45.04 feet to a point; running thence: north 23 degrees 43 minutes 27 seconds east a distance of 101.08 feet to a point; running thence south 66 degrees 41 minutes 07 seconds east a distance of 188.03 feet to a point; running thence south 23 degrees 00 minutes 18 seconds west a distance of 170.27 feet to a point; running thence south 15 degrees 24 minutes 16 seconds west a distance of 107.15 feet to the northeasterly right of way of Biscayne Drive (60 foot right of way) and the POINT OF BEGINNING.

TOGETHER WITH easements granted under that certain Reservation of Easement by Considine Enterprises, Inc. dated February 29, 1980, filed and recorded on March 7, 1990, in Deed Book 7498, page 415, Fulton County, Georgia Records, for ingress and egress of pedestrian and vehicular traffic to Peachtree Road.

TOGETHER WITH easements granted under that certain Declaration of Easements, dated February 29, 1980, filed and recorded on March 7, 1980, in Deed Book 7498, Page 420, Fulton County, Georgia Records, as amended by that certain of Parking Areas under Declaration of Easements recorded at Deed Book 7498, page 420, Fulton County, Georgia Records, dated March 24, 1983, filed and recorded on March 25, 1983, in Deed Book 8419, page 481, aforesaid records, for ingress and egress to Biscayne Drive.

EXHIBIT "B"

UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS AND LIABILITIES FOR COMMON EXPENSES

Residential Units

<u>Unit Number</u>	<u>Number of Bedrooms</u>	<u>Ownership Percentage</u>
101	1	.93
102	1	.93
103	2	1.36
104	1	.93
105	1	.93
106	1	.93
107	1	.93
108	1	.93
109	1	.93
110	1	.93
111	2	1.36
112	2	1.36
201	1	.93
202	1	.93
203	2	1.36
204	1	.93
205	1	.93
206	1	.93
207	1	.93
208	1	.93
209	1	.93
210	1	.93
211	2	1.36
212	2	1.36
301	1	.93
302	1	.93
303	2	1.36
304	1	.93
305	1	.93
306	1	.93
307	1	.93
308	1	.93

Exhibit "B"
... continued

Residential Units

<u>Unit Number</u>	<u>Number of Bedrooms</u>	<u>Ownership Percentage</u>
309	1	.93
310	1	.93
311	2	1.36
312	2	1.36
401	1	.93
402	1	.93
403	2	1.36
404	1	.93
405	1	.913
406	1	.93
407	1	.93
408	1	.93
409	1	.93
410	1	.93
411	2	1.36
412	2	1.36
501	1	.93
502	1	.93
503	2	1.36
504	1	.93
505	1	.93
506	1	.93
507	1	.93
508	1	.93
509	1	.93
510	1	.93
511	2	1.36
512	2	1.36
601	1	.93
602	1	.93
603	2	1.36
604	1	.93

Exhibit "B"
... continued

Residential Units

<u>Unit Number</u>	<u>Number of Bedrooms</u>	<u>Ownership Percentage</u>
605	1	.93
606	1	.93
607	1	.93
608	1	.93
609	1	.93
610	1	.93
611	2	1.36
612	2	1.36
701	1	.93
702	1	.93
703	2	1.36
704	1	.93
705	1	.93
706	1	.93
707	1	.93
708	1	.93
709	1	.93
710	1	.93
711	2	1.36
712	2	1.36
801	1	.93
802	1	.93
803	2	1.36
804	1	.93
805	1	.93
806	1	.93
807	1	.93
808	1	.93
809	1	.93
810	1	.93
811	2	1.36
812	2	1.36

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Exhibit "B"
... continued

Commercial Units

<u>Unit Number</u>	<u>Number of Bedrooms</u>	<u>Ownership Percentage</u>
CU-1	Commercial	.08
CU-2	Commercial	.32
TOTAL		100.00

EXHIBIT "C"

PARKING SPACE ASSIGNMENTS

Unit Numbers

CU-1

Parking Spaces Assigned

On Level P3: Parking Spaces 1-28

On Level P2: Parking Spaces 1-41

On Level P1: Parking Spaces 1-47

EXHIBIT "D"

STORAGE SPACE ASSIGNMENTS

Unit Number	Storage Spaces Assigned
CU-1	1-40