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CONDOMINIUM PLAT BOOK 21, PAGE 101

CONDOMINIUM FLOOR PLANS BOOK 56, PAGES 26-44

**DECLARATION OF CONDOMINIUM**

**TWIN OAKS IN CABBAGETOWN, A CONDOMINIUM**

After recording, please return to: **Chad Henderson, Esq.**  
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Exhibit A - Description of Submitted Property

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STATE OF GEORGIA  
COUNTY OF FULTON

**DECLARATION OF CONDOMINIUM  
FOR  
TWIN OAKS IN CABBAGETOWN, A CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM is made on the date set forth on the signature page hereof by Sarkar Development Group, Inc., a Georgia corporation, and Robi Sarkar, a resident of the State of Georgia (collectively, the "Declarant").

**WITNESSETH**

WHEREAS, Declarant is the owner of that certain parcel of real property located in Land Lot 20 of the 14th District of Fulton County, Georgia, as more particularly described in Exhibit A attached hereto and incorporated herein by this reference, including all improvements now or to be located or constructed thereon (the "Condominium"); and

WHEREAS, Declarant desires to subject the said property to the provisions of this Declaration and to the Georgia Condominium Act, O.C.G.A. § 44-3-70, *et seq.* (the "Condo Act"); and

WHEREAS, Declarant may, but shall not be obligated to, submit to the Condo Act and this Declaration that certain property described in Exhibit B attached hereto and incorporated herein by reference (the "Additional Property"), as provided in this Declaration.

NOW, THEREFORE, Declarant hereby submits to the Condo Act and to this Declaration the property described in Exhibit A hereto.

DECLARANT HEREBY FURTHER DECLARES that, upon recordation of this Declaration, the said property shall thereafter be transferred, used, encumbered, leased and occupied subject to the Condo Act and to all of the covenants, conditions, restrictions, and other provisions hereof, as follows:

1. **Purpose.** The purpose of this Declaration, and the covenants, conditions, restrictions and other provisions hereof, is to preserve, enhance and protect the value and desirability of the Condominium property. This Declaration and each covenant, condition and restriction contained herein shall run with and be appurtenant to the title to the said property and shall be binding upon all persons having or acquiring any right, title or interest in and to all or any portion of the said property and their respective heirs, legal representatives, successors and assigns, for the benefit of all owners of the same.

2. **Plat and Floor Plans.** A plat of survey for the Condominium, prepared by Georgia Land Surveying Co., Inc., dated July 16, 2012 (the "Plat"), has been filed in Condominium Plat Book 21, Page 101, Fulton County, Georgia records. Floor plans relating to the Condominium, prepared by Rutledge Alcock, dated July 17, 2012 (the "Floor Plans"), have been filed in Condominium Floor Plans Book 56, Page(s) 26-44, Fulton County, Georgia records. The Plat and Floor Plans are incorporated herein by reference as though the same were set forth fully herein. For so long as Declarant owns any Unit or has an unexpired option to add Additional Property to the Condominium, Declarant shall have the right to amend the Plat and/or Floor Plans as necessary to reflect any improvements, modifications and/or renovations to the Common Elements or to any Unit owned by Declarant.

**3. Unit Boundaries.** The Condominium shall be divided into ten (10) units (each individually a "Unit" and collectively the "Units"), plus Common Elements, including Limited Common Elements, all as more particularly defined and described herein and as depicted on the Plat and Floor Plans. Each Unit shall be conveyed as a separately-designated and legally-described freehold estate subject to the Condo Act and this Declaration. The Units shall include their respective undivided percentage interests in the Common Elements and all portions of the Condominium building which lie inside the following described boundaries:

(a) **Exterior Walls, Party Walls and Other Vertical Boundaries.** The perimeter or vertical boundaries of each Unit shall be the centerlines of all walls of the Unit which are shared with other Units. The perimeter boundaries of each Unit with respect to exterior walls, walls that are shared with interior Common Elements such as stairwells and lobby areas, if any, and all other walls which are not shared with other Units, shall be the vertical plane formed by the back, unexposed surface of the wallboard, sheetrock or other such material which forms the interior surface of each such wall, with the wooden studs or other material to which the same is attached, and all other materials used in construction of the said walls, forming a part of the Common Elements. Each Unit shall include within its boundaries any and all wallboard, sheetrock, wooden columns and studs, insulation, gypsum board, and all other material comprising the portions of the walls of such Unit which are located within the above-described perimeter boundaries.

(b) **Upper Boundaries.** The upper boundary of each portion of a Unit located beneath another Unit shall be the lowermost surface of the wooden beams supporting the subflooring of the Unit above, with the beams constituting part of the Common Elements, and the subflooring above constituting part of the Unit above. The upper boundary of each portion of a Unit located on the uppermost level of a Condominium building shall be the horizontal plane formed by the lower surface of the wooden trusses which form the roof of such building, with any sheetrock or drop ceiling material constituting part of the Unit, and the truss systems or other supports for the roof, the wooden decking, roof shingles and all other material forming the roof of the building constituting part of the Common Elements.

(c) **Lower Boundaries.** The lower boundary of each portion of a Unit located above any other Unit shall be the lowermost surface of the wooden subflooring of the Unit, with the said subflooring and all carpet, hardwood, tile or other flooring constituting part of the Unit, and the wooden beams constituting part of the Common Elements. The lower boundary of each portion of a Unit located on the lowermost floor of a Condominium building shall be the uppermost surface of the concrete slab on which the Unit is constructed, with the flooring, if any, constituting part of the Unit, and all concrete slabs and other elements of the building foundation constituting part of the Common Elements.

(d) **Additional Information for Interpreting Unit Boundaries.** In interpreting these descriptions and the Floor Plans, the existing physical boundaries of the Units as originally constructed shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the Plat, the Floor Plans, or in any deed or other instrument, regardless of minor settling or lateral movement of a Condominium building, and regardless of minor variances between the boundaries shown on the Floor Plans or in any deed or other instrument and those of the Units. All ducts, conduits, pipes, wires and other such devices which serve a single Unit, including but not limited to heating and air conditioning systems, electrical and natural gas systems, telecommunications and other like systems, and plumbing systems, including all fixtures and appliances, regardless of whether or not a portion of any such system may be located outside of the boundaries of the Unit as set forth above, shall be deemed a part of such Unit, except that any portions thereof which serve the Common Elements, or which serve more than one Unit, shall be deemed a part of the Common Elements. All exterior doors, windows and skylights which serve a

single Unit shall be included within the boundaries of that Unit, subject to any Association maintenance and repair obligations as set forth elsewhere herein.

#### 4. Common Elements and Limited Common Elements.

(a) Common Elements Defined. All landscaped areas and vegetation, sidewalks, parking areas, patios, walkways, trash receptacles, mail kiosks, building foundations, roofs and roof systems, structural elements, exterior building veneer, and all other portions of the Condominium which are not located within the boundaries of any Unit as defined in Section 3 above, shall be deemed a part of the Common Elements.

Each owner of a Unit shall have an undivided ownership interest in and to the Common Elements in accordance with the ownership percentages set forth in Exhibit C hereto. In addition to the Mortgagee consents required by Section 18 hereof, the ownership percentage of any Unit or Units may be altered only by the consent of all owners and Mortgagees of the affected Units, expressed in a duly recorded amendment to this Declaration, except in the case of expansion of the Condominium as provided in Section 20 hereof, in which case the amendment may be approved and executed by Declarant without approval of the owners or Mortgagees. Ownership of the Common Elements shall be enjoyed by the owners of the Units as tenants-in-common; however, no Unit owner shall have any right to bring an action for partition or division of the Common Elements, or any portion thereof, except as may be provided in this Declaration or in the Condo Act.

(b) Limited Common Elements. Notwithstanding the foregoing or anything to the contrary contained elsewhere herein, certain portions of the Common Elements are hereby assigned as Limited Common Elements to certain Units, as follows:

(i) If parking spaces are ever designated for the exclusive use of one or more Units, as Limited Common Elements pursuant to Section 4(c) below, each such parking space shall be assigned as a Limited Common Element to such Unit, unless and until such time as said parking space may be unassigned or reassigned to another Unit as provided elsewhere herein.

(ii) Any balcony or terrace which is adjacent to and serves only one or more Units, whether or not the same is identified as "Limited Common Element" or "LCE" on the Floor Plans, is assigned as a Limited Common Element to the Unit or Units to which it is adjacent or for which it has been so designated.

(iii) Each Unit shall be assigned a mailbox or mail slot as a Limited Common Element appurtenant to such Unit.

(iv) Any pipes, ducts, cables, wires, conduits and other apparatus which serve only one (1) Unit and which are not deemed part of the Unit pursuant hereto are assigned as Limited Common Elements to the Unit which they serve and to which they are adjoined and connected.

(v) Any utility meter which serves fewer than all of the Units is assigned as a Limited Common Element to the Unit or Units which it serves.

(vi) Any portion of the Common Elements upon which is located air conditioning or heating equipment or other apparatus serving fewer than all of the Units is assigned as a Limited Common Element to the Unit or Units served thereby. The Association shall have the right, at its sole expense, to relocate any HVAC, plumbing, electrical, telecommunications or

other systems or apparatus, provided that such relocation does not cause an increase in the cost of operation of the same by any Unit owner.

(c) Assignment of Common Elements as Limited Common Elements. Subject to the provisions of Section 44-3-82 of the Condo Act, the Association shall have the authority to assign Common Elements which have not been previously assigned as Limited Common Elements, upon written application to the Association by the owners of the Unit or Units directly affected by the same. Any such assignment shall be made by the Association by recordation in the Fulton County, Georgia real estate records of amendments to the Declaration, Plat and/or Floor Plans, as necessary, executed by the Unit owner or owners making such application and by the Association. Notwithstanding the above or anything else to the contrary contained herein, for so long as Declarant owns a Unit or has an unexpired right to add Additional Property to the Condominium, Declarant shall have the right (i) to assign any portion of the Common Elements as a Limited Common Element to any Unit then owned by Declarant, (ii) to assign storage spaces, if any, and parking spaces, or rent the same, to any Unit owner, and (iii) to reassign any previously assigned Limited Common Elements with the consent of the owners of any Units affected thereby. Declarant alone shall have the right to retain any and all proceeds from the assignment by Declarant of any previously unassigned Common Elements or Limited Common Elements.

5. Association Membership and Voting. The Condominium shall be administered by the Twin Oaks in Cabbagetown Unit Owners Association, Inc., a Georgia nonprofit corporation (the "Association"), which shall be governed by the bylaws attached hereto as Exhibit D, as restated or amended from time to time (the "Bylaws"). Any person or entity who purchases a fee simple interest in and to any Unit shall automatically become a member of the Association, upon the closing of such purchase, and shall automatically cease to be a member of the Association upon his, her or its transfer or sale of such Unit, whether by sale, gift, foreclosure, death or incompetency, or otherwise. The owner or owners of each Unit shall be entitled to one (1) vote on all matters set forth herein or in the Bylaws for vote by the membership of the Association regardless of the number of owners of any such Unit, and regardless of the varying ownership percentages allocated to the Units as set forth on Exhibit C hereto.

#### 6. Assessments.

(a) Annual Assessments. The Association shall have the power to levy annual assessments for all budgeted and actual expenses of the Association, wherever and however incurred, including but not limited to the costs of repairing, replacing, maintaining and operating the Common Elements and other portions of the Condominium for which the Association has maintenance, repair, management or other responsibility. Assessments shall be payable by each owner of a Unit regardless of the amount of use, if any, which any particular owner may make of the Common Elements, and regardless of whether the Association has fulfilled its obligations hereunder. Annual assessments shall be levied against the Units in accordance with the ownership percentages set forth on Exhibit C hereto. All references herein to "regular assessments" shall refer to the assessments described in this Section 6(a).

(b) Special and Specific Assessments. The Board may levy special assessments against all of the Units in accordance with the ownership percentages set forth on Exhibit C, hereto, to the fullest extent permitted under Sections 44-3-80 and 44-3-109 of the Condo Act. In addition, the Association may, but shall not be required to, levy specific assessments against one or more Units under the following circumstances:

(i) If the benefit to be received from any non-budgeted expense will be enjoyed disproportionately by one or more Units, then the expense may be assessed against only those Unit(s).

(ii) If any non-budgeted expense (which may include any deductible or uninsured cost) is necessitated by any act or omission of the owner or owners, tenants, representatives or guests of one or more Units, then the expense may be assessed against only those Unit(s).

(iii) The Condominium is served by common water meters, with individual sub-meters for each Unit. The Board shall have the authority to assess, as a specific assessment, individual Unit utilities usage charges for water and any other utilities now or hereafter billed to the Association, based upon each Unit's actual usage as determined by submetering of the individual Units. In addition to usage charges, the Association shall have the right to assess the Units for any overhead or other costs of the submeters or related systems which may be maintained or installed by the Association. Likewise, if the Condominium now or hereafter receives a single solid waste or sanitation bill, the Association may assess the Units for the same, based on actual usage or pro-rata, in the discretion of the Board.

(c) Association Budget. At least twenty-one (21) days prior to each annual meeting of the Association, the Association's board of directors (the "Board") shall prepare a budget summarizing the anticipated expenses and capital reserves of the Association for the proceeding calendar year, and deliver copies of the same to the Unit owners via U.S. mail, electronic mail, facsimile, overnight delivery, or any other means selected by the Board in its reasonable discretion. Said budget shall take effect on the first day of the proceeding calendar year unless duly disapproved by the Association at said annual meeting. If so disapproved, then the budget in effect for the current calendar year shall remain in effect until a new budget is approved at a special meeting of the Association called for such purpose in accordance with the Bylaws.

Notwithstanding the above, prior to the expiration of Declarant's right to appoint and remove officers and directors of the Association, as set forth in the Bylaws, Declarant shall prepare a budget on an annual or more frequent basis and present the same to the Board for approval. Provided the same complies in all respects with Section 44-3-80 of the Condo Act, any budget so prepared by Declarant and approved by the Board shall be the budget for the Association until such time as a new budget is approved pursuant hereto.

(d) Working Capital, Surpluses, Deficits and Reserves. In addition to capital reserves, if any, provided in the budget, the Declarant, on behalf of the Association, shall establish a working capital fund to meet unanticipated costs and expenses. Contributions to the working capital fund shall be collected at closing from any person or entity who purchases a Unit from the Declarant, in the amount of two (2) months' regular assessments for such Unit. Under no circumstances shall any working capital funds be used by the Association to offset any budget deficits or by the Declarant for its expenses or construction costs.

(e) Surpluses and Profits. All surpluses and profits of the Association, if any, shall be either applied to the current year's regular operating expenses, the subsequent year's operating expenses, to capital reserves, or shall be distributed to the Unit owners, all at the sole discretion of the Board, subject to the provisions of Section 44-3-108 of the Condo Act.

(f) Payment of Assessments. At the discretion of the Board, all regular assessments shall be paid either annually, quarterly or monthly, in equal annual, quarterly or monthly installments (on the first day of each calendar year, quarter or month, as the case may be). Any regular, special or specific assessments or other charges not paid within ten (10) days of when due shall subject the delinquent owner to a late charge of Ten Dollars (\$10.00) or Ten Percent (10%) of the amount due, whichever is greater. In addition, if any Unit owner becomes more than thirty (30) days delinquent in the payment of assessments, then the amount of such delinquent assessments and any late charges imposed thereon shall incur interest at the rate of Ten Percent (10%) per annum, unless the maximum amount permitted by applicable law is less.

in which case such maximum allowable rate shall apply. In addition, and not to the exclusion of any other remedies available at law or equity, the Association may pursue any one or more of the following remedies upon ten (10) days written notice to such owner:

(i) institute legal action against such owner in any judicial or administrative body of competent jurisdiction;

(ii) revoke such owner's right to pay regular assessments in monthly or quarterly installments and demand that the unpaid amount of that year's regular assessments be paid in full immediately;

(iii) suspend such owner's right to vote on matters requiring a vote of the membership of the Association;

(iv) suspend such owner's privileges to use any or all of the Common Elements (unless such owner's rights of ingress or egress would be restricted thereby); and

(v) suspend any utility or service to such Unit, provided that (i) the payment of such utility or service is an expense of the Association, (ii) the Association has obtained a judgment for payment of such delinquent assessments in excess of the minimum amount provided in the Condo Act, (iii) the Association has otherwise complied with all applicable provisions of the Condo Act, and (iv) such utility or service is restored upon payment in full of all delinquent assessments and all fees, interest and other charges associated therewith.

(g) Obligation to Pay Assessments. All assessments levied against a Unit shall be both a personal obligation of the person or entity who owned the Unit at the time of assessment and shall run with the title of such Unit and constitute a lien against the same to the fullest extent provided in the Condo Act. Each owner of a Unit, regardless of the presence or absence of any applicable language in the deed or other instrument by which such Unit was conveyed to such owner, shall be deemed to have covenanted and agreed to pay all regular, special and specific assessments levied against such Unit, whether prior to or during his, her or its ownership thereof, including any other fees, costs, interest or other charges incurred by the Association in connection with the same or the collection thereof.

(h) No Abatement of Assessments. 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.

(i) No Waiver. No delay or failure on the part of the Association in the exercise of its rights as set forth in this Section 6 shall operate as a waiver thereof, and no single or partial exercise by the Association of any such right shall preclude other or further exercise thereof or the exercise of any other right hereunder.

(j) Exemption of Declarant. Notwithstanding anything to the contrary herein, except as provided in Section 8(g) below, Declarant shall be exempt from payment of assessments on any unoccupied Units owned by Declarant for a period of two (2) years from the filing of this Declaration in the Fulton County Superior Court real estate records, as permitted by Section 44-3-80(d) of the Georgia Act; provided, however, Declarant shall be liable for payment of all common expenses of the Association incurred during such period which exceed the amounts assessed against other Unit owners.



**7. Right of Access.** Without limiting the generality of any other provision hereof or any applicable provisions of the Condo Act, and in addition to any other specific rights set forth elsewhere herein or in the Condo Act, the Association and its duly authorized agents, contractors and representatives, without being subject to criminal or civil liability for trespass, shall have the right, but not the obligation, to enter any Unit (a) for purposes of repair, replacement, maintenance or operation of any Common Elements, (b) to attend to any emergency situation, (c) for the safety or security of the Condominium or any other Unit or Unit owner, (d) to shut off any utility or other service to such Unit or any other Unit, pursuant to Section 6(f)(v) above, or (e) to monitor construction within such Unit pursuant to Section 9(d) below. Such right of access shall only be exercised during reasonable hours and after notice to the owner or occupant of the Unit, unless the circumstances require otherwise.

**8. Insurance.**

(a) Association Insurance Policies. The Association shall be required to maintain only the types and amounts of insurance as required by this Declaration and Section 44-3-107 of the Condo Act, both as revised or amended from time to time. Said policies may exclude fixtures and appliances, wall coverings, floor coverings, and any other improvements made to a Unit by its owners or tenants only to the extent permitted by said Section 44-3-107 and other applicable law. 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. Said policies may also contain any and all exclusions from coverage to the greatest extent allowable by the Condo Act, as the same may be amended from time to time. The Board of Directors shall make available for review by Unit owners a copy of the Association's insurance policy to allow them to assess their personal insurance needs. All policies of insurance shall be written with a company licensed to do business in the State of Georgia, and the company shall provide insurance certificates to each Unit owner and each Mortgagee upon request. 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.

(b) Types and Terms of Insurance Policies. 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 which the Association is obligated to insure pursuant to Section 8(a) above. 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.

(c) Mortgagee Rights. The Board shall use its best reasonable efforts to ensure that each policy of insurance obtained by the Association provides that each holder of a Mortgage on a Unit will be entitled to at least thirty (30) days written notice if the policy is to be cancelled, non-renewed or substantially modified, or if such Mortgagee's coverage is at risk of being cancelled or otherwise affected by nonpayment of premium or by any act or omission of the Unit's owner. Nothing contained in this Section 8 or elsewhere herein shall be construed as a limitation on the right of any Mortgagee which is beneficiary of a mortgagee endorsement to distribution of insurance proceeds, nor as giving any Unit owner or other party priority over any Mortgagee to any insurance proceeds for losses to the Common Elements. Mortgagees having an interest in any insured loss shall be entitled to participate in all negotiations with the carrier regarding adjustment of the same, provided that the Board shall have sole authority to adjust any and all such losses. 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.

(d) 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 their respective portions 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 any deductible pertaining directly to his or her Unit. If any owner fails to pay any deductible as required under this subsection, then the Association may pay the deductible and assess the cost to such owner pursuant to Section 6(b) of this Declaration; provided, however, where the deductible is for the insurance required under the Condo Act, no Unit owner shall be assigned an amount that exceeds the maximum allowed by the Condo Act, as the cost of the deductible for any single casualty loss.

(e) Withholding from Proceeds. No owner or tenant of a Unit shall be entitled to receive any insurance proceeds which have been paid to the Association unless such owner or tenant is current with all assessment payments. At the discretion of the Board, any insurance proceeds otherwise payable to a Unit owner or tenant may be applied first to delinquent assessments owed by that owner or its tenants.

(f) Unit Owner Policies. Each Unit owner shall be responsible for maintaining insurance coverage for his or her Unit to the extent that the same is not covered by Association insurance policies described elsewhere in this Section 8, and shall supply evidence of the same to the Association upon request. The Association shall be entitled, but not obligated, to obtain such insurance for any uncovered Units and assess the cost of the same to the owners of said Units. Each Unit owner and tenant shall be responsible for reviewing the policies of insurance described above, which shall be made available by the Association upon request during normal business hours, and for assessing and providing for their own insurance needs based on their review of the same. Each Unit 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, and shall promptly notify, in writing, the Board of Directors in the event such policy is cancelled. In no event shall the Association policies described elsewhere in this Section 8 be brought into contribution with any insurance obtained by any Unit owner or Mortgagee.

(g) Declarant Exemption Period. If during the period that Declarant is exempt from payment of assessments, as provided in Section 6(j) above, common expenses are incurred resulting from a casualty which is not covered by proceeds from insurance maintained by the Association, such common expenses shall be assessed equally against all Units on the date of such casualty, including Units owned by Declarant on such date, unless expressly provided otherwise in this Declaration or the Georgia Act.

**9. Architectural Control.** The following shall apply to all Unit owners and tenants of the Condominium other than the Declarant:

(a) Association Approval. No modifications or improvement shall be made to any Unit or Common Elements, including Limited Common Elements, which are visible from outside of the Unit, without the consents and approvals provided herein. With regard to interior modifications, the Association, acting by and through its Board of Directors, shall have the right to approve or disapprove any proposed construction, modification or structural improvement in and to the individual Units, if (i) the proposed addition or improvement is visible from outside the Unit, (ii) any additional load is to be placed upon the structural components of the building, or (iii) any necessary tie-ins are to be made to common

plumbing or electrical systems. Each individual Unit owner or occupant shall be responsible for obtaining any and all necessary permits and other approvals, and for ensuring compliance with all local, state and federal regulations and requirements, including but not limited to applicable zoning and building codes. The Board shall have the right to require damage or security deposits, in reasonable amounts, from any owner or occupant of a Unit, and/or their agents, representatives and contractors, for cost or damage resulting from any renovation, improvement or construction activities undertaken or proposed by such owner or occupant. The Board shall also have the right to approve or disapprove any contractor or other person making repairs or improvements to any Unit pursuant to Section 9(d) below.

(b) Subdivision; Removal and Relocation of Boundaries. No Unit may be divided into two or more Units, and no boundaries between Units which share a common wall or floor/ceiling may be removed or relocated, or any Common Elements incorporated into any Unit or Units, except in strict accordance with the provisions of this Section 9 above and Section 44-3-91 of the Condo Act. None of the restrictions contained in this Section 9(b) shall apply to the Declarant for so long as it owns one or more Units in the Condominium.

(c) Requests for Approval. Any owner or occupant of a Unit other than Declarant who wishes to undertake any construction, modifications or improvements of such Unit of the types described in Section 9(a) above, shall submit a written request for approval thereof to the Board. Requests for approval shall be accompanied by plans and specifications which are detailed enough to allow the Board to evaluate the proposed improvements according to this Section 9. If approved, such construction, modification or improvement must be commenced within six (6) months, and completed within nine (9) months, from the date of approval. The Board shall be entitled to oversee all construction and improvement activity, shall be given periodic progress reports by the Unit owner, and shall have the authority to suspend or halt construction activity if reasonably necessary to ensure that the plans and specifications as presented to the Board are being complied with.

(d) Construction Activity. The Board shall have the right to approve or disapprove contractors or subcontractors who desire access to the Condominium for the purpose of making repairs or improvements to Units, based on rules and regulations adopted by the Board which may include, without limitation, financial stability of the contractors and/or subcontractors, history of compliance with the Condominium Instruments and rules and regulations of the Association, and other factors that may be reflective of quality and ability. Approval of a contractor or other such person shall not be unreasonably withheld. The Board may also impose insurance requirements and collect other non-refundable fees for use of trash receptacles, elevators and other Common Elements. Any construction or renovation activity in any Unit which is detectable by sound or vibration from outside the Unit shall be permitted only between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, exclusive of federal holidays. Each owner and occupant shall be responsible for their contractors' compliance with this Declaration, including but not limited to this Section 9(d) and Section 10(h) below.

(e) Enforcement. Any construction, modification or improvement to a Unit which does not comply with this Section 9 shall be removed by the owner of the Unit, and the Unit restored to substantially the same condition as existed prior to the unauthorized work, immediately upon request in writing by the Board. If such removal and restoration is not commenced within seven (7) days of the date of such written request, and/or not completed within thirty (30) days thereof, the Association and its authorized agents, representatives or contractors shall have the right to enter the Unit and perform such removal and/or restoration, with all costs associated therewith levied against the Unit and its owner(s) as a specific assessment pursuant to Section 6 above. This Section 9(e) shall not apply to any interior modifications or improvements made by the Declarant for so long as it owns one or more Units in the Condominium, or any exterior modifications or improvements made prior to the recording of this Declaration.

# **10. Association Rules and Regulations.**

(a) **General.** The Association, acting by and through its Board of Directors, shall have the right to make and enforce reasonable rules and regulations governing the use of the Condominium, including the Units, Limited Common Elements and other Common Elements, and to enforce such rules and regulations by fines, specific assessments or otherwise, in the same manner as provided in Section 6 above. Each owner of a Unit shall be responsible for ensuring that all tenants, occupants and guests of the Unit comply with said rules and regulations, if any, and with this Declaration, with the understanding that any violation thereof by tenants, occupants and guests may result in action by the Association against any of said persons and/or the owner of the Unit.

Regardless of whether or not any such rules and regulations are adopted by the Board, each Unit owner and all tenants, occupants and guests of any Unit owner shall comply with the following use restrictions. Any and all rules and regulations adopted by the Board shall include the following restrictions, at a minimum, although the following may be amended pursuant to Section 15 below, and may be expanded upon by such rules and regulations to the extent that the same do not conflict with or contradict this Declaration, as the Board determines necessary in its reasonable discretion or as otherwise provided herein. In addition, each Unit owner and all tenants, occupants and guests shall comply with the Cabbagetown Landmark District Regulations set forth in Chapter 20A of Section 16 of the City of Atlanta Code of Ordinances, as the same may be amended or restated from time to time, all of which regulations are incorporated herein by reference.

(b) **Permitted and Prohibited Uses of Units.** Each Unit may be used in any manner permitted by law and all applicable zoning and other like ordinances, provided that no activity is carried on by any Unit owner or occupant which:

(i) constitutes a nuisance, including but not limited to obnoxious odors or noises, or creates a hazard to the public or other Unit owners and occupants;

(ii) increases the Association's insurance premiums or affects its ability to qualify for any insurance for which it would have otherwise been qualified;

(iii) requires a significantly disproportionate use by the Unit of the Common Elements, or any utility or other service which is now or may in the future be a common expense of the Condominium, except as otherwise permitted by the Board; or

(iv) consists of any one or more of the following prohibited uses (each of which hereafter a "Prohibited Use"):

- (1) dance or music halls, night clubs, concert venues or discotheques;
- (2) bowling alleys;
- (3) cinemas or movie theaters;
- (4) pool halls;
- (5) "massage parlors" or other facilities that hosts obscene, nude or semi-nude live performances, provided that legitimate day spa facilities shall not be prohibited;
- (6) establishments where obscene, pornographic or "adult" materials or paraphernalia, including, but not limited to, movies, audio and video

- recordings, devices, books, magazines, or other related items are sold or displayed;
- (7) "head shops" or other facilities used for the sale, display or advertisement of any paraphernalia used in the preparation or consumption of controlled substances;
  - (8) bars or other establishments deriving more than fifty percent (50%) of gross sales from alcoholic beverages for on-site consumption;
  - (9) liquor stores or other retail shops deriving more than fifty percent (50%) of their revenue from the sale of alcohol for consumption off-premises (except this prohibition shall not apply to establishments wherein at least 90% of the alcoholic beverage revenues are from sale of wine for consumption off-premises);
  - (10) funeral homes or stores selling caskets;
  - (11) mortuaries;
  - (12) industrial, manufacturing or warehousing operations;
  - (13) any automobile service stations or car washes, automobile, truck, van, trailer, mobile home or recreational vehicle sales, leasing, display or repair facilities, including without limitation any tire, battery, auto parts and accessory sales;
  - (14) youth hostels, sleeping apartments or lodging rooms of any sort;
  - (15) veterinary clinics, animal boarding or breeding facilities (except this prohibition shall not apply to pet-grooming shops or pet supply stores that do not board animals and typically do not keep pets overnight);
  - (16) thrift stores, liquidation outlets, flea markets or similar establishments, provided consignment shops shall not be prohibited;
  - (17) betting or other gaming establishments, facilities or operations, including but not limited to off-track or sports betting parlors, table games such as black-jack or poker, slot machines, video poker/black-jack/keno machines or similar devices;
  - (18) auditoriums, meeting halls, churches or other houses of worship, colleges and schools or other instructional organizations catering primarily to students/trainees (as opposed to customers or clients);
  - (19) video arcades and similar entertainment facilities;
  - (20) tattoo or piercing parlors;
  - (21) check-cashing, payday loan or title loan services;
  - (22) laundromats or coin laundries; and
  - (23) dry cleaning services, except for establishments providing pick-up and drop-off services only with no on-site use of dry cleaning equipment, machinery or chemicals.

(c) Permitted and Prohibited Uses of Common Elements. The Common Elements are designated for the use of all owners, occupants and guests of the Units, and no owner, occupant or guest shall cause or permit any use of the Common Elements which is in conflict with the nature and intended uses of the Common Elements. No objects shall be placed or stored on the Common Elements except by the Association or as otherwise provided herein. No flower beds, gardens, landscaping or other plantings may be installed or maintained on the Common Elements by any Unit owner or occupant without prior consent of the Board. No outdoor fireplaces, grills or other such objects shall be placed or stored upon the Common

Elements except by the Board, or in one or more areas designated by the Board for such purposes. The Board may further restrict the use of the Common Elements by properly enacted rules and regulations, and may provide for reservation of the same by Unit owners and occupants. All Unit owners and their occupants and guests shall use the Common Elements at their own risk.

Notwithstanding anything to the contrary contained herein, all Limited Common Elements shall be for the exclusive use of the owners, occupants and guests of the Units to which they have been assigned, subject to this Declaration, the rights of other Unit owners, occupants and guests to ingress and egress thereon, to the extent necessary for access to their Units and/or Common Elements, and any rules and regulations adopted by the Board from time to time. Under no circumstances shall the Association be liable for any loss of or damage to property which may be stored in or upon any of the Common Elements, including Limited Common Elements.

(d) Parking. Until such time, if ever, that one or more parking spaces are assigned as Limited Common Elements pursuant to Section 4(c) hereof, all parking spaces shall be shared with other Unit owners and occupants on a first-come, first-served basis. No more than a reasonable number of parking spaces may be used by the owners and occupants of any single Unit, subject to more specific restrictions as may be adopted by the Board from time to time. No panel trucks, trailers, campers, boats, jet-skis or other recreational vehicles or equipment may be stored on the Common Elements. No abandoned vehicles, or vehicles which are disabled or in obvious disrepair, may be parked or stored on the Condominium property for more than seven (7) days. The Board may adopt any other reasonable rules and regulations governing the use of parking spaces, and shall have the power to enforce the same and the provisions hereof by fines or specific assessments, as provided in Section 6 hereof, by towing or booting of vehicles at their owners' expense, or by any other means permitted by law. Anyone who parks or stores a vehicle of any kind on the Condominium property shall be solely responsible for his or her own safety and for the security of his or her vehicle and all contents thereof.

(e) Storage Spaces. There are currently no Common Element storage spaces in the Condominium. At such time, if any, that the Declarant or the Association should create and assign any such spaces pursuant to Section 4(c) above, the Association may adopt any reasonable rules and regulations governing the use of the same, and shall have the power to enforce said rules and regulations by fines or specific assessments, as provided in Section 6 hereof, by removal of any property or materials which violate any such rules or regulations or the provisions hereof, or by any other means permitted by law. Each owner, occupant and guest making use of any storage space in the Condominium, whether within or outside his or her Unit, shall be solely responsible for the security of any and all property stored therein.

(f) Patios, Balconies and Terraces. Each patio, balcony and terrace now existing or hereafter added to the Condominium which is identified as "LCE" or a Limited Common Element on the Plat and/or Floor Plans shall be for the exclusive use of the Unit or Units to which the same is adjacent. No patio, balcony or terrace may be enclosed in any manner. No outdoor fireplaces, grills or other objects shall be placed or stored upon any patio, balcony or terrace which violate any applicable law or ordinance, including all applicable zoning and fire ordinances. No window boxes or potted plants may be installed, stored or hung from the railing of any balcony or terrace. No vines shall be permitted to grow on or around any railings, exterior walls or other portions of the Common Elements. No patio, balcony or terrace may be used for hanging or drying clothes, linens, towels or other materials. The Association may adopt additional rules and regulations governing use of patios, balconies and terraces.

(g) Yard Sales. No flea markets, yard sales or the like shall be permitted on the Common Elements or any other portion of the Condominium without prior approval from the Board. The Board shall have the power to condition its approval by limiting the duration, starting and ending times, and locations of the same.

(h) Nuisance. It shall be the responsibility of each Unit owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt conditions. No Unit or the Common Elements shall be used, in whole or in part, by any owner or occupant or their contractors, representatives or guests, for the storage of any property or thing that will cause the Condominium building to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property.

(i) Signage. Any and all signage visible from outside a Unit shall be subject to Board approval according to the process set forth in Section 9 above, and subject to all applicable local rules and ordinances. Notwithstanding the above, a single "for sale" or "for lease" sign, measuring no greater than eighteen by twenty-four inches (18" x 24") may be displayed in the window of any Unit by the owner thereof. No other "for sale" or "for lease" signs may be maintained upon or within any Unit if visible from the exterior of the Unit, nor on any portion of the Common Elements except in such areas, if any, which may be designated by the Board from time to time. Any other signage visible from outside a Unit shall be subject to Board approval according to the process set forth in Section 9 above, and according to all applicable local rules and ordinances. The Board may adopt other rules and regulations governing the installation and display of signage, provided the same are consistent herewith. This Section 10(i) shall not apply to the Declarant for so long as it owns any Unit.

(j) Smoking. The use of cigars, cigarettes, pipes and other tobacco products within the Units shall not be limited except as provided by applicable laws and ordinances. Smoking shall be prohibited upon the Common Elements except in areas designated by the Association, if any, and on an Owner's or Occupant's Limited Common Element balcony, patio or terrace. Use of tobacco or similar products by owners, tenants or their guests and invitees in violation of these restrictions, or which causes an unreasonable nuisance to other owners, tenants, guests or invitees, shall subject the offending owners and tenants to fines and other means of rules enforcement pursuant to the authority granted to the Board by this Declaration.

(k) Windows and Window Treatments. All window treatments shall be white or off-white as visible from outside of a Unit. Under no circumstances may any Unit owner or occupant install or maintain tinting, or install window bars or similar security devices, on any window or exterior door of his or her Unit.

(l) Animals and Pets. No animals of any kind other than common household pets may be raised, bred, kept or permitted within the Condominium. No more than three (3) cats or dogs, or combination thereof, and no more than a reasonable number of other common household pets, may be kept in any Unit. No pit bulls, rottweilers, akitas, doberman pinschers, mastiffs, nor any dog whose bloodline consists of greater than fifty percent (50%) of any one or more of said breeds, may be brought onto nor kept in the Condominium at any time by any Owner or tenant. The above restrictions shall not apply to any pet grooming or similar establishment operated in the Condominium, provided the same complies in all other respects with this Section 10, including without limitation Section 10(b) above. No animals shall be bred, maintained or kept overnight in any Unit for any commercial purpose. All pets in the Condominium shall be caged, kept on a leash or otherwise contained when outside of a Unit. All pets shall be registered, licensed, and vaccinated as required by law. Pets which endanger health, make objectionable noise, or constitute a nuisance or inconvenience to other Owners, tenants, guests or invitees must be removed by their owner upon request of the Board. Feces left upon the Common Elements must be immediately removed by the person responsible for the pet.

(m) Flags and Antennae. No flags or banners of any type may be installed or maintained upon any portion of the Common Elements, including without limitation any Limited Common

Element balconies or patios. The installation of antennae, satellite dishes and other similar or related equipment or apparatus for the transmission and/or reception of television or radio or other signals shall be subject to such rules and regulations adopted from time to time by the Board. Such rules and regulations shall be enforceable as if fully set forth herein. Satellite dishes measuring greater than one (1) meter in diameter or other signal receiving or transmitting antennas and devices attached to a roof extending more than six (6) feet above the highest part of the roof of any building are expressly prohibited. No antenna may be installed on any Common Elements, including without limitation the roof of any building or any Limited Common Element patio or balcony, without prior, written approval of the Board.

(n) Waste Disposal. All garbage shall be regularly removed from each Unit and shall not be allowed to accumulate therein. Garbage shall be disposed of in sealed bags and either placed in the trash dumpsters or other proper receptacles designated by the Board for collection, or removed from the Condominium. No garbage shall be placed next to or allowed to accumulate around the trash receptacles or upon any other portion of the Common Elements, including Limited Common Elements, temporarily or otherwise.

(o) Occupants Bound. All provisions of this Declaration and the Bylaws, and any rules and regulations, use restrictions or design guidelines adopted pursuant thereto which govern the conduct of Unit owners and which provide for sanctions against Unit owners, shall also apply to all tenants and occupants, even though tenants and/or occupants are not specifically mentioned. Fines may be levied against Unit owners and occupants alike. If a fine is first levied against a tenant or occupant and is not timely paid, the fine may then be levied against the Unit owner.

#### 11. Maintenance of Units and Common Elements.

(a) Owner and Association Responsibilities. Except as otherwise provided herein, each owner of a Unit shall be responsible for maintenance and repair of such Unit, including all systems, equipment and apparatus which are deemed a part of such Unit pursuant to Section 3 above. The Association shall be responsible for repair and maintenance of all Common Elements, excluding patios, balconies and terraces which have been assigned as Limited Common Elements to one or more Units. Each Unit owner shall be responsible for cleaning, sealing and/or painting of all exterior doors, windows and skylights serving his or her Unit, subject to architectural approvals as required under Section 9 above, and for ensuring the same are kept in good repair for purposes of the safety and security of themselves and their guests and invitees, as well as the security of their belongings. The Association shall be responsible for operation, repair and maintenance of all columns, beams, trusses, cross-braces and other structural components and systems in the Condominium, notwithstanding that any of the same may lie within the boundaries of one or more Units as such boundaries are defined and described herein.

(b) Failure to Repair or Maintain Unit. Notwithstanding any of the above, if the Board deems any condition existing in a Unit or any Limited Common Elements to be in need of repair or maintenance, and if the Unit owner or occupant responsible for the same fails to perform such repair or maintenance within thirty (30) days of written notice thereof, the Association may perform any such repair or maintenance and may levy a specific assessment against such Unit and its owner, in the amount of the reasonable cost thereof. Said thirty (30) day notice shall not be required in emergencies or under other circumstances when serious harm or damage can be avoided only by prompt action.

(c) Limitation of Liability. Under no circumstances shall the Association be liable for any injury, loss or damage caused in whole or in part by the Association's failure to discharge its responsibilities hereunder, if such injury, loss or damage was not a foreseeable, natural result of the Association's failure to discharge its responsibilities.



**12. Leasing and Occupancy of Units.**

(a) Definitions. For purposes of this Section 12, the following terms shall have the meanings ascribed herein:

(i) The term "leasing" shall mean the regular, exclusive occupancy of a Unit by any person other than its owner, except that leasing shall not include occupancy by the children, parents, spouses and domestic partners of owners, the roommate of any Unit owner who occupies the Unit as his or her primary residence, or guests of any Unit owner for periods not to exceed fourteen (14) consecutive days.

(ii) The term "Residential Unit" shall mean any Unit being occupied primarily for residential use.

(iii) The term "Commercial Unit" shall mean any Unit other than a Residential Unit.

(b) General Prohibition of Leasing; Exceptions. Except as expressly provided elsewhere in this Section 12, the leasing of Residential Units is prohibited. This prohibition on leasing shall not apply to any lease of a Commercial Unit, nor to any leasing transaction entered into by the Association, the Declarant (regardless of whether said lease is entered into prior to or after the expiration of the Declarant's right to appoint and remove officers and directors of the Association pursuant to the Bylaws), or any Mortgagee who becomes the owner of a Unit through foreclosure or similar means in lieu of foreclosure. Such parties shall not be required to obtain a leasing permit, as described below, and such Units shall not be counted when determining the maximum number of Residential Units that may be leased in accordance with this Section 12.

(c) Leasing Permits. Any Residential Unit owner who is not delinquent in payment of assessments, or otherwise in breach of such owner's duties hereunder, may apply to the Board for a leasing permit allowing the owner to lease his or her Unit. A leasing permit shall state any and all conditions set by the Board consistent herewith and shall be valid only as to the owner applying for the same and such owner's Unit. Leasing permits may not be transferred or assigned to other Units or their owners, provided that they may be transferred or assigned to successors in title to the same Unit. Nothing contained herein shall be construed as granting any authority to the Board or the Association to approve or disapprove any proposed tenant.

(d) Request for Leasing Permit. The Board shall approve any written request for a leasing permit from the purchaser or owner of a Unit, so long as issuance of a leasing permit for the Unit will not result in more than twenty-five percent (25%) of the total Residential Units in the Condominium (excluding Units owned by the Declarant or Mortgagee post-foreclosure) having leasing permits. In addition, the Board may issue a leasing permit to the owner of any Residential Unit who would suffer a substantial hardship if denied the privilege of leasing such owner's Unit, in the reasonable discretion of the Board (and the Declarant, so long as Declarant owns a Unit). Any such discretionary approval or denial shall be based on the nature, degree, and likely duration of the hardship, the harm, if any, which could result to the Condominium by allowance of the permit, and the extent to which the number of Residential Units with current, valid leasing permits exceeds twenty-five percent (25%). Examples of "hardships" as contemplated hereby include, but shall not be limited to, the following: (1) the Unit owner dies and the Unit is being administered by his or her estate; (2) the Unit owner is temporarily relocated outside of the Atlanta metropolitan area but plans to return to reside in the Unit; and (3) the Unit owner is permanently relocated outside the Atlanta metropolitan area and has been unable to sell the Unit for at least ninety percent (90%) of its fair market value after having actively marketing the Unit for

no less than six (6) months. Unit owners who have been denied leasing permits after written request therefor shall automatically be placed on a waiting list for a leasing permit and shall have priority over any Unit owner who makes a later request.

(e) Revocation and Expiration of Leasing Permits. A leasing permit shall be automatically revoked if the Unit for which it has been issued is not leased during any period of ninety (90) consecutive days after issuance of the permit. In addition, any leasing permit issued pursuant to a hardship shall be automatically revoked after the expiration of one (1) year after its issuance, or if during the said one-year term, the Unit owner is issued a leasing permit on a non-hardship basis.

(f) Lease Terms. Any lease agreement entered into for a Residential Unit shall be for a term of no less than six (6) months, provided that a lease may convert to a month-to-month term after the first term of occupancy. No Unit may be leased except in its entirety. In addition, the following provisions shall be incorporated automatically into all lease and occupancy agreements for any Unit in the Condominium, whether or not the same are repeated therein:

(i) a covenant by the tenant to comply with the terms of this Declaration and all rules and regulations adopted by the Association in accordance herewith;

(ii) a prohibition against any subleasing of the Unit or assignment of the lease without prior written approval of the Board;

(iii) a delegation to the Board by the Unit owner of the owner's rights to enforce the terms of the lease and this Declaration against the tenant, including but not limited to the right to evict a tenant as provided by law and in the lease;

(iv) a transfer to the tenant of all of the Unit owner's rights to use of the Common Elements;

(v) an assignment to the Association of, and delegation of the right to collect payment of, all rents payable by the tenant to the Unit owner, to the extent of any unpaid assessments due from the Unit owner to the Association from time to time; and

(vi) any other provisions required by law, it being the responsibility of each Unit owner to be familiar and to comply with the Condo Act and with all other applicable laws and regulations, as well as any and all restrictions and requirements imposed by lenders having or considering a security interest in such Unit.

It shall be the responsibility of each Unit owner to provide his, her or its tenants with copies of this Declaration, the Association's current bylaws, and any Association rules and regulations adopted from time to time by the Board.

(g) Notice of Lease Agreements. The Board shall be provided with a copy of all leases within seven (7) days after the effective date of each such lease.

(h) Number of Occupants. No Unit may be occupied for residential purposes by more than three (3) persons per each bedroom as shown on the Floor Plans. For purposes hereof, the Owner(s) of a Unit shall be counted towards the maximum number of occupants per bedroom.

**13. Sale of Units.** No less than seven (7) days prior to the sale or other transfer of a Unit, the owner thereof shall give written notice of the same to the Board, including the name and address of

the intended transferee and such other information as the Board may reasonably request. In addition, the transferee of a Unit shall give written notice to the Board of his or her ownership of the Unit within seven (7) days after acquiring title. Any Unit owner who fails to give proper notice of any intended or actual transfer, as the case may be, shall be liable to the Board for any and all costs associated with such failure of notice, which costs may be assessed against the Unit, its transferor and/or its transferee.

**14. Disclosures.** By acquisition of title to or possession of any Unit, each Unit owner and occupant hereby understands and acknowledges the following:

(a) Because the Units share walls, floors and ceilings with other Units and with the Common Elements, it is likely that noise and vibration will be detectable between Units and between the Units and the Common Elements.

(b) The Condominium is located within the Cabbagetown Landmark District and is governed by numerous additional regulations as a result thereof, all of which are matters of public record. Each Unit owner and occupant shall be bound by the covenants, easements and restrictions set forth in the said regulations, and this Declaration shall be subordinate and subject in all respects to the same.

(c) The Condominium is located in a densely populated urban area and is in close proximity to commercial properties, public thoroughfares, parks and venues. It shall be the responsibility of each Unit owner and occupant, and potential owners and occupants, to become familiar with the neighborhood in which the Condominium is located, including periodic festivals, sports and entertainment activities, and other events which may affect the use and enjoyment of the Units.

(d) Certain portions of the real property upon which the Condominium is constructed may not be part of the Condominium. Said areas are described in Exhibit B as part of the Additional Property. It shall be the responsibility of each Unit owner and occupant, and potential owners and occupants, to review and to become familiar with the various rights and obligations associated with the Additional Property owner's use and ownership of the said areas, as contained throughout this Declaration. Unless and until the submission of any portion or all of the Additional Property, the Declarant and its successors and assigns shall have exclusive use and enjoyment of the Additional Property, including but not limited to the exclusive right to develop the same and right to any and all income derived from the same in whatever form or manner the same may be earned through use, development, operation and ownership of the same.

(e) Certain common area lighting, water or other utilities may be tied into and billed to one or more Units. All charges and other cost for the same shall be the responsibility of the owners of such Units. The relative ownership and assessment percentages for the Units, as reflected in Exhibit C hereto, have been adjusted to account for the estimated additional cost of the same. No Unit owner or occupant shall have any right of action or other recourse against the Declarant or Association as a result of any such utilities charges, notwithstanding anything herein to the contrary. No Unit owner or occupant may alter or interfere in any way with such common utilities. The Association may enforce the provisions of this Section 14(e) in any manner provided in this Declaration, including fines, self-help, and any other legal or equitable means.

(f) No transferee of any Unit shall acquire any "air rights" or easements for light or air appurtenant to his or her ownership of such Unit. The views from any Unit or from the Common Elements are subject to change over time due to development and other eventualities.

(g) The zoning of the Condominium property and of neighboring properties is subject to change. It shall be the responsibility of each Unit owner and occupant, and potential owners and

occupants, to become familiar with all applicable and proposed zoning ordinances affecting the Property and neighboring properties.

(h) The Floor Plans and any dimensions or square footage calculations shown thereon are approximations. It is the responsibility of each Unit owner and occupant to investigate such measurements for purposes of determining the accuracy thereof.

(i) Portions of the Condominium and Additional Property may be undergoing construction and improvement by Declarant, both prior to and after the sale and/or occupancy of other portions of the Condominium. Said construction activities may result in unusual levels of noise, smoke, dust and odors, none of which shall be deemed a nuisance or a violation of this Declaration for so long as Declarant owns a Unit, provided Declarant shall take reasonable steps to ensure all Unit owners are notified in advance of heavy construction activities, and that the same are conducted only between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, exclusive of federal holidays.

(j) Concrete surfaces such as are located throughout the Condominium are subject to cracking due to building settlement. In addition, exposed concrete surfaces in any portion of the Condominium which is not heated and cooled are subject to cracking due to water penetration, expansion and contraction of the concrete due to temperature changes.

(k) Mold and mildew can grow in any portion of the Condominium that is exposed to elevated levels of moisture. The Association and each Unit Owner agree to (i) regularly inspect the parts of the Condominium that they respectively maintain, and which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew, and/or water intrusion and/or damage; (ii) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Condominium that they respectively maintain; (iii) remediate or replace any building material located in the parts of the Condominium that they respectively maintain that has absorbed water or moisture as a result of water intrusion; and (iv) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Condominium that they respectively maintain in accordance with current industry-accepted methods. In addition, the Association agrees to notify the Unit Owners, and each Unit Owner agrees to notify the Association of the discovery of mold, mildew, and/or water intrusion and/or damage in the parts of the Condominium that they respectively maintain. Notwithstanding anything to the contrary herein, Declarant shall have no obligation to perform any invasive testing or inspections, maintenance or repairs in accordance with this Paragraph 14(j), and shall not be held liable for any loss or damage caused by the failure of the Association or a Unit Owner to perform their obligations herein.

(l) The Declarant and/or the Association may, from time to time, provide measures of security on the Condominium property; however, neither the Declarant nor the Association is a provider of security, and neither shall have any duty to provide security on the Condominium property. The obligation to provide security lies solely with each Unit owner individually. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

## **15. Easements.**

(a) Unit Owner Easements. Each owner of a Unit, and such owner's tenants, occupants and guests, where applicable, shall have the following rights and easements, which shall be appurtenant to and shall pass with the title to such Unit:

(i) a non-exclusive easement of support which shall burden any portion of any other Unit or the Common Elements which supports or which contributes to the support of such Unit;

(ii) a non-exclusive easement over and upon any and all Common Elements which have not been assigned as Limited Common Elements to any other Unit or Units, subject only to other restrictions set forth elsewhere herein and to the right of the Board to adopt and enforce reasonable rules and restrictions governing the use thereof;

(iii) a non-exclusive easement, for repair and maintenance, over and upon any portion of the Common Elements or any other Unit in which are located any ducts, conduits, pipes, wires or other such systems or apparatus serving the Unit; and

(iv) any and all other easements and other such rights as provided under the Condo Act or any other applicable law.

(b) Declarant Easements. Notwithstanding anything to the contrary contained elsewhere herein, Declarant and its agents, representatives and contractors, for so long as Declarant owns a Unit or has an unexpired right to add Additional Property to the Condominium, shall have the easements set forth in Section 19(b) herein.

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

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

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

(iii) the right to improve, renovate and/or reconstruct the portion of the Condominium property situated immediately adjacent to the Additional Property, including but not limited to the permanent installation, construction, use, maintenance, repair, and replacement of any and all supports, means of support, load-bearing structures and appurtenances as are called for given the nature and extent of the improvements located, or in the plans and specifications for any improvements to be located, in the Additional Property, or as may from time to time become necessary or appropriate in connection with the enjoyment, operation, development and maintenance

of the Additional Property; provided that the said support facilities shall be constructed, rebuilt, repaired, replaced and maintained by the Additional Property Owner so as to ensure proper support and minimize damage to the Condominium property;

(iv) the right to make permanent, minor encroachments over the boundary lines between the Additional Property and the Condominium property, which shall consist of an area no more than three (3) feet from any and every such boundary line, created by the construction, reconstruction, renovation, or improvement of the Additional Property, or the settling, shifting, or other causes of movement of any improvements now or hereafter located upon the Additional Property, so long as any such encroachments do not substantially interfere with the Condominium property;

(v) the rights of contractors, subcontractors and other permittees of the Additional Property Owner (and their respective employees, representatives and equipment) to make temporary encroachments over the boundary lines between the Additional Property and the Condominium property, to the extent reasonably necessary to improve, construct, renovate, repair, and maintain the Additional Property, or any part thereof; provided, however, that (1) the Additional Property Owner shall exercise its rights under this section in such a manner as to minimize disruption of the quiet enjoyment, use, and operation of the Condominium property; (2) any access and encroachment activities permitted by this section shall be completed as soon as practicable once commenced; and (3) no easement is granted to the Additional Property Owner by this subsection (v) for the permanent storage of materials or equipment upon the Condominium property;

(vi) the rights of the Additional Property Owner and its permittees to emergency ingress, egress and access over the Condominium property, said rights being appurtenant to the Additional Property for the benefit of its owners and the Permittees thereof; and

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

To the extent any right or easement created by this Section is stated to benefit the "permittees" from time to time of the Additional Property Owner, the Additional Property Owner shall be entitled to designate from time to time which, if any, of its permittees shall be entitled to utilize and enjoy such easements, it being the intent of the Declarant that no independent rights shall be created by this Section as to any such permittees except for those which may be terminated or withdrawn at any time by the Additional Property Owner, from whom such rights were derived.

Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person causing the damage at his or her sole expense. This Section shall not be amended without the express, written consent of Declarant or Declarant's successors and assigns for so long as the Additional Property remains separate from the Condominium.

(d) Easement and Use Rights Granted by the Declarant. For so long as Declarant has an option unilaterally to subject Additional Property to this Declaration as provided in Section 20,

Declarant shall have an easement and the right to grant to persons who are not members of the Association, but who are residents of the Additional Property, the right to use the Condominium Common Elements, including, without limitation, recreational facilities. The extent and duration of such use shall be determined solely by Declarant.

Declarant hereby expressly reserves unto itself, its successors and assigns, a non-exclusive, perpetual right, privilege and easement with respect to the Condominium for the benefit of Declarant, its successors, assigns and the above-discussed nonmember users, over, under, in and/or on the Condominium (including, without limitation, the above-described recreational facilities), for the purposes of taking all actions related to or connected with the granting of nonmember use and the use by such nonmembers as described above. The right, privilege and easement shall include, without limitation, the right of access, ingress, use and egress of and to the above-described recreational facilities and the right of access, ingress, use and egress for vehicular and pedestrian traffic over, under, on or in the Condominium driveways, walkways and parking areas.

**16. Amendments.** Except for amendments which require any greater or lesser vote of the Association as provided elsewhere herein or in the Bylaws, or which require only the approval of the Board, this Declaration may only be amended by the affirmative vote of at least sixty-seven percent (67%) of the total eligible vote of the members of the Association at any annual meeting, or any special meeting called for that purpose, or by written consent of the members in lieu of a meeting to the extent permitted by the Bylaws, subject to Section 44-3-93 of the Condo Act. In addition, any amendment hereto shall require the consent of Declarant as long as Declarant owns a Unit. All amendments, to be effective, shall be executed by the Association, in recordable form, and filed in the Fulton County, Georgia real estate records.

**17. Eminent Domain.** The Association shall have the right to represent the Unit owners in any eminent domain or condemnation proceedings, and to apply the proceeds of any taking, or sale in lieu thereof, in any manner not prohibited by the Condo Act or any other applicable law. Nothing contained herein shall be construed as giving any Unit owner or other person priority over any Mortgagee to any condemnation awards for the taking of any portion or all of the Common Elements.

**18. Special Provisions Applicable to Mortgage Holders.**

(a) **Rights of Mortgage Holders.** The approval or consent of no less than sixty-seven percent (67%) of the holders of first-priority Mortgages on Units (or owners of any unencumbered Units) shall be required for any of the following acts of the Association or the Unit owners:

- (i) voluntary or inadvertent abandonment or termination of the Condominium;
- (ii) modification of the pro rata interest or obligations of any individual Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or determining the pro rata share of ownership of each Unit in the Common Elements other than in the case of expansion of the Condominium as provided in Section 20 hereof;
- (iii) partition or subdivision of any Unit in any manner inconsistent with the provisions of this Declaration;
- (iv) voluntary or inadvertent abandonment, partition, subdivision, encumbrance, sale or transfer of the Common Elements or any portion thereof, other than the granting of easements or licenses as authorized herein; or
- (v) the use of hazard insurance proceeds for losses to any portion of the Condominium (whether to Units or to Common Elements) for any

purposes other than the repair, replacement, or reconstruction of the same.

In addition to the above, material amendments to this Declaration must be approved by the holders of first-priority Mortgages on Units which represent at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages. Material amendments are those which establish, provide for, govern or regulate any of the following:

- (i) Voting;
- (ii) Assessments, assessment liens or subordination of such liens;
- (iii) Reserves for maintenance, repair and replacement of the Common Elements;
- (iv) Insurance or fidelity bonds;
- (v) Rights to the use of Common Elements, other than assignment or reassignment of Limited Common Elements as provided in Section 4(c) above;
- (vi) Responsibility for maintenance and repair of the Condominium;
- (vii) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property, other than Additional Property, to or from the Condominium;
- (viii) Boundaries of any Unit;
- (ix) The interests in the Common Elements or Limited Common Elements, other than in the case of expansion of the Condominium as provided in Section 20 hereof;
- (x) Convertibility of Units into Common Elements or of Common Elements into Units;
- (xi) Leasing of Units;
- (xii) Imposition of any right of first refusal or similar restriction on the right of a Unit owner to sell, transfer, or otherwise convey his or her Unit in the Condominium;
- (xiii) Establishment of self-management by the Association where professional management has been required by any of the agencies or corporations set forth below; and
- (xiv) Amendment of any provisions which are for the express benefit of holders, insurers or guarantors of first-priority Mortgages on Units in the Condominium.

Notwithstanding the foregoing, Declarant or the Board, without the necessity of approval by Mortgagees or Unit owners, may amend this Declaration to correct any scrivener's errors, to comply with any applicable state, city or federal law, and/or to bring the Condominium into compliance with applicable rules and regulations of the Federal National Mortgage Association, the Department of Housing and Urban Development or the Veterans Administration pursuant to federal law.

The provisions of this Section 18(a) 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 Condo Act, the Bylaws or this Declaration for any of the acts listed above. Any action to challenge the validity of an amendment adopted under this Section 18 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.



(b) Liability for Prior Assessments. Where the holder of a first Mortgage of record, a secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the secondary purchase money Mortgage is the seller of the Unit) or other purchaser of a Unit obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable, nor shall the Unit be subject to a lien, 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 common expenses collectible from the owners of all Units (including said owner and its successors and assigns) in proportion to their respective liability for common expenses generally. Nothing contained herein shall be construed as limiting or abating said owner's responsibility for assessments and other charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

(c) Request for Notice by Insurer, Guarantor or Mortgage Holder. Any insurer, guarantor or holder of a first-priority Mortgage on any Unit, upon written request to the Association, shall be entitled to timely written notice of the following at the address specified in such written request:

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

(ii) any proposed termination of the Condominium;

(iii) any condemnation or casualty loss which affects said Unit or a material portion of the Condominium;

(iv) any delinquency in the payment of assessments or charges owed by the owner(s) of said Unit, or any other default in the performance of any other obligation hereunder, which is not cured within sixty (60) days;

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

(vi) any proposed action which requires the consent of a specified percentage of Mortgagees, as set forth herein or in the Condo Act.

In addition, upon written request any holder of a first-priority Mortgage shall be entitled to a copy of the financial statement of the Association for the immediately preceding fiscal year.

Notwithstanding anything to the contrary herein, at the discretion of the Board, the Association may, but shall not be required to, provide any of the above information, including delinquencies by Unit owners in payment of their assessments, to any insurer, guarantor or mortgage holder regardless of whether such third party has requested the same.

(d) De Facto Approval and Consent. To the extent permitted by the Condo Act, if any Mortgagee of a Unit receives notice from the Association or the Unit owner of any amendment to this Declaration or other action affecting the Unit and/or the Common Elements, and fails to respond to the same within sixty (60) days of the date of such notice, then such Mortgagee shall be deemed to have approved such amendment or other action, notwithstanding anything to the contrary contained herein, provided that

such request was delivered to the Mortgagee by registered or certified mail, return receipt requested, or by statutory overnight delivery.

(e) No Derogation of Rights. Notwithstanding anything to the contrary contained in Sections 12 or 13 above or elsewhere in this Declaration, nothing contained herein shall impair the right of any holder of a first-priority Mortgage to foreclose or take title to a Unit pursuant to remedies contained in its security instruments, to take a deed or assignment in lieu of foreclosure, or to sell, lease, or otherwise dispose of a Unit thus acquired by the Mortgagee. In addition, nothing contained herein or in any rules or regulations of the Association shall be deemed to limit in any way the rights of Mortgagees as set forth in the Condo Act and any other applicable laws.

19. Declarant Rights. In addition to each and every other right and privilege reserved by or granted to the Declarant as set forth in the Condo Act and/or elsewhere in this Declaration, the Declarant shall have the following rights and privileges. The terms of this Section 19 shall in no respect be construed as limiting or superseding any such other rights and privileges as set forth in the Condo Act, or elsewhere herein, or in the Bylaws or otherwise.

(a) Construction and Sale Period. Notwithstanding any provisions in this Declaration or the Bylaws to the contrary, as long as Declarant owns any Unit or has an unexpired right to submit Additional Property to the Condominium, it shall be expressly permissible for Declarant and its agents, contractors and representatives, to maintain and carry on, upon such portions of the Condominium as Declarant may desire, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's development, construction and sales activities related to the Condominium property, including, without limitation, the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on, or in the Condominium; the right to tie into any portion of the Condominium with streets, driveways, parking areas and walkways; the right to tie into and/or otherwise connect to and use (without a tap-on or any other fee for so doing), install, lay, replace, relocate, maintain, and repair any device which provides utility or similar services; the right to carry on sales and promotional activities in the Condominium; and the right to construct and operate business offices, signs, construction trailers, model Units, and sales offices. Declarant and its agents, contractors and representatives, may use Units or offices owned or leased by Declarant as model Units and sales offices.

(b) Declarant Easements. Notwithstanding any provisions in this Declaration or the Bylaws to the contrary, as long as Declarant owns any Unit or has an unexpired right to submit Additional Property to the Condominium, the Declarant and its duly authorized contractors, representatives, agents, and employees shall have: (i) an easement for the placement and 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, sale or lease of the Unit; and (ii) a transferable non-exclusive 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. In addition, Declarant shall have easements for the conduct of all other activities and for the exercise of all other rights as set forth elsewhere in this Declaration.

(c) Transfer or Assignment of Rights. The rights and obligations of the Declarant as set forth herein and in the Condo Act may be transferred or assigned, in whole or in part, to the Association or to other persons or entities, provided that no such transfer or assignment shall reduce any such obligation nor enlarge any such right beyond that which is provided hereunder or in the Condo Act,

as the case may be. Upon any such transfer or assignment, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations.

**20. Expansion of Condominium.** Declarant reserves the option to expand the Condominium by adding to the Condominium all or any part of the Additional Property on one or more occasions. Except for zoning and other governmental requirements, there are no limitations as to the location of improvements on the Additional Property. The Additional Property may be added as a whole at one time or portions may be added at different times. There are no limitations fixing the boundaries of any portion of the Additional Property that may be submitted to the Declaration, and there are no limitations regulating the order in which portions of the Additional Property may be submitted to this Declaration. This option shall expire seven (7) years from the date of recording of this Declaration; provided, however, owners of Units to which sixty-seven percent (67%) of the total vote in the Association appertain, excluding any votes appurtenant to any Unit or Units then owned by the Declarant, may consent to the extension of this expansion option within one (1) year prior to the date upon which the option would have otherwise expired. The maximum number of Units that may be created on the Additional Property and added to the Condominium is ten (10). The maximum average number of Units *per acre* that may be created on any portion of property added to the Condominium is one hundred (100).

No assurances are made that any improvements will be made on all or any portion of the Additional Property that may be submitted to the Declaration. The Additional Property shall not be restricted to any particular use, but shall be subject only to uses allowed by applicable Zoning Ordinances. No assurances are made that the units which may be built on all or any portion of the Additional Property will be substantially identical to the Units on the submitted property in any way whatsoever, including but not limited to the quality of construction, the principal materials to be used in such construction and architectural style. All improvements to be located on each portion of the Additional Property that is being submitted to the Condominium shall be substantially complete prior to its submission to the Condominium. The Declarant shall have the right to assign Limited Common Elements on the Additional Property, which may include Limited Common Elements different from those assigned in this Declaration and there shall be no limitations on the right to assign Limited Common Elements on the Additional Property. In addition, in the event that the Additional Property is added to the Condominium, Declarant shall have the right, but not the obligation, to assign portions of the existing Condominium as Limited Common Elements to some or all of the Units existing as of the date of recording of this Declaration. The undivided interests in the Common Elements are allocated among the Condominium Units on the submitted property on the basis of the square footage of each Unit in comparison to the square footage of all Units, and, upon the expansion of the Condominium to include any portion of the Additional Property, shall be reallocated among the Condominium Units on the submitted property and the Additional Property on the same basis. Any expansion under this Section shall be effected by Declarant's unilateral execution and recording of all amendments to this Declaration, plats and/or floor plans required by the Condo Act, which shall reflect any differences in the subsequent phase or phases as contemplated by this Section. The Condominium Units thereby created and added, if any, shall be owned by Declarant, but the Common Elements (including any Common Elements created by the submission of Additional Property) shall be owned by all of the Unit owners.

**21. Miscellaneous.**

(a) Notice. Any notice to the owner or occupant of a Unit which is provided for in this Declaration may be served personally, mailed to the owner or occupant at the address of the Unit, mailed to any other address provided by the Unit owner to the Association, or sent by electronic mail, facsimile, overnight delivery, or in any other manner as determined in the reasonable discretion of the Board, except as expressly required otherwise by the Condo Act or other applicable law.

(b) Enforcement. The provisions of this Declaration are for the benefit of the owners of Units in the Condominium and, in addition to the enforcement rights of the Association, these provisions may be enforced by any such owner. However, any claim or dispute with regards to any Unit or Units, as opposed to the Common Elements, must be prosecuted solely by the owners of said Unit or Units individually, rather than by the Association on their behalf.

(c) Governing Law. This Declaration shall be governed by and construed under the laws of the State of Georgia.

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

(e) Headings. The headings and captions of each section and subsection hereof, as to the contents of each such section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to such section or subsection.

(f) Definitions. All capitalized terms not herein defined shall have the meanings as specified in the Georgia Condo Act, or if not defined therein, then such terms shall have their generally accepted meanings.

(g) Preparer. This Declaration was prepared by Chad Henderson, Esq. of Henderson Legal L.L.C., 1350 Spring Street, Suite 485, Atlanta, Georgia 30309.

(h) Duration. The provisions of this Declaration are perpetual in nature and are not terminable except by written consent of owners and Mortgagees of Units to which eighty percent (80%) of the total vote in the Association appertain, in recordable form, duly recorded in the Fulton County real estate records.

IN WITNESS WHEREOF, the Declarant has executed this Declaration of Condominium on this, the 23rd day of July, 2012.

DECLARANT:

SARKAR DEVELOPMENT GROUP, INC.  
a Georgia corporation

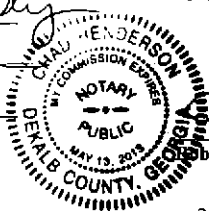
By: \_\_\_\_\_  
Robi Sarkar, President

[CORPORATE SEAL]

Signed, sealed and delivered  
in the presence of:

Witness

Notary Public



Robi Sarkar, individually

(SEAL)

**EXHIBIT A**

**Description of Submitted Property**

ALL THAT TRACT OR PARCEL of land lying and being in Land Lot 20 of the 14th District of Fulton County, Georgia, and being more particularly described as follows:

BEGINNING at the intersection of the northerly edge of the right of way of Kirkwood Avenue (40 foot right of way) and the easterly edge of the right of way of Tye Street (35 foot right of way), being the true Point of Beginning; thence North 13 degrees 33 minutes 32 seconds West along the easterly edge of the right of way of Tye Street 137.39 feet to a point; thence South 89 degrees 26 minutes 34 seconds East 84.47 feet to a point; thence South 88 degrees 05 minutes 29 seconds East 6.38 feet to a point; thence South 87 degrees 59 minutes 32 seconds East 69.05 feet to a point on the westerly edge of the right of way of Short Street (35 foot right of way); thence South 04 degrees 28 minutes 32 seconds West along the westerly edge of the right of way of Short Street 139.70 feet to a point at the intersection of the northerly edge of the right of way of Kirkwood Avenue and the westerly edge of the right of way of Short Street; thence North 85 degrees 30 minutes 32 seconds West along the northerly edge of the right of way of Kirkwood Avenue 117.10 feet to a point on the easterly edge of the right of way of Tye Street, being the true Point of Beginning; as shown on a plat of survey prepared by Josh L. Lewis, IV, RLS No. 3028, for Sarkar Development Group, Inc., dated July 16, 2012.

**EXHIBIT B**

**Description of Additional Property**

ANY TRACT OR PARCEL of land lying and being in Land Lot 20 of the 14th District of Fulton County, Georgia, bordering the property described in Exhibit "A" hereto, which may now or hereafter be owned by the Declarant.

**EXHIBIT C****Undivided Percentage Interest in the Common Elements  
and Liabilities for Common Expenses**

<b>Unit No.*</b>	<b>Percentage**</b>
Unit A-1	19.0%
Unit B-1	7.5%
Unit B-2	10.5%
Unit B-3	9.0%
Unit C-1	7.5%
Unit C-2	9.0%
Unit C-3	10.5%
Unit D-1	7.5%
Unit D-2	9.0%
Unit D-3	10.5%
	100.0%

\* The Units are shown on the Floor Plans as "Suite B1" and "Suite B2" etc.

\*\* NOTE: Each Unit is allotted one (1) vote regardless of ownership percentage.

**EXHIBIT D**

**BYLAWS  
OF  
TWIN OAKS IN CABBAGETOWN UNIT OWNERS ASSOCIATION, INC.**

**ARTICLE I  
GENERAL**

1.01 Applicability. These Bylaws provide for the organization and governance of the Twin Oaks in Cabbagetown Unit Owners Association, Inc. (the "Association"), in accordance with the Georgia Nonprofit Corporation Code, O.C.G.A. §14-3-101, *et seq.* (the "Nonprofit Corporation Code"), the Georgia Condominium Act, O.C.G.A. §44-3-70, *et seq.* (the "Condo Act"), the Articles of Incorporation for the Association, filed with the Georgia Secretary of State (the "Articles"), and the Declaration of Condominium for Twin Oaks in Cabbagetown, A Condominium (the "Condominium"), filed in the real estate records of Fulton County, Georgia (the "Declaration"), all as may be amended from time to time.

1.02 Definitions. All capitalized terms used herein shall have the meanings as specified in the Declaration, or if not defined therein, then as specified in the Nonprofit Corporation Code, or if not defined therein, then such terms shall have their generally accepted meanings.

**ARTICLE II  
MEMBERSHIP AND MEETINGS OF THE MEMBERS**

2.01 Membership. Each owner of a Unit in the Condominium (a "Unit Owner," and collectively the "Unit Owners") shall be automatically a member of the Association upon the vesting of his or her ownership of a Unit. Membership may not be assigned or transferred independent of the Unit to which it is appurtenant. Each Unit in the Condominium shall be entitled to one (1) vote, which may be exercised by the owner or owners of such Unit as they see fit. If only one owner of a Unit which is owned by more than one person casts a vote at any meeting of the members, it shall be conclusively presumed that such person is authorized to cast such vote. If two (2) or more owners of a Unit cast votes at any meeting of the members, the Association may disregard all such votes cast, provided that any such Unit may still be counted in determining whether a quorum is present at such meeting.

2.02 Annual Meetings. The annual meeting of the members of the Association shall be held at the principal office of the Association or at such other place as may be determined by the Board of Directors, during the first (1st) quarter of each fiscal year, for the purpose of electing directors and transacting such other business as may properly be brought before the meeting.

2.03 Special Meetings. Special meetings of the members of the Association may be called by the President of the Association, and any such meetings shall be held at the registered office of the Association or at such other place as may be designated in the notice for any such meeting. In addition, special meetings shall be called by the President when so directed by the Board of Directors or at the request in writing of members of the Association holding, collectively, at least fifteen percent (15%) of the authorized votes of the Association. Any such request shall state the purpose or purposes for which the meeting is to be called.

2.04 Notice of Meetings. Written notice of every meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given by or at the direction of the President



to each member of the Association entitled to vote at such meeting. Such notice shall be delivered no less than twenty-one (21) nor more than forty-five (45) days before the date of any annual meeting. Such notice shall be delivered no less than seven (7) nor more than forty-five (45) days before the date of any special meeting. Notice may be given in any manner permitted by Section 14-3-141 of the Nonprofit Corporation Code, Section 44-3-102 of the Condo Act, the Articles or Declaration, all as may be amended from time to time, including without limitation by electronic means. If mailed, such notice shall be deemed delivered when deposited in the United States mail with first class postage thereon prepaid, addressed to each member of the Association at his or her address as it appears in the Association's records, or if no such address exists in the Association's records, then at the address of his or her Unit. If sent by any other means, such notice shall be deemed delivered as provided in Section 14-3-141 of the Nonprofit Corporation Code.

**2.05 Waiver of Notice.** Attendance of a member of the Association at any annual or special meeting of the members, either in person or by proxy, shall constitute a waiver of notice of such meeting and of all objections to the place or time of meeting, or the manner in which it has been called or convened, except when a member attends a meeting solely for the purpose of stating such objection. Notice need not be given to any member who signs a waiver of notice, in person or by proxy, before, during or after the meeting.

**2.06 Quorum.** The holders of at least thirty percent (30%) of the eligible Association vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all regular, annual and special meetings of the members, except as otherwise provided by statute, by the Articles or elsewhere in these Bylaws. When a quorum is once present at a meeting, it is not broken by the subsequent withdrawal of any of those present. Members whose voting privileges have been suspended or revoked shall not be counted in determining the presence of a quorum. If a quorum is not present or represented at any meeting of the members, a majority of the members present or represented at the meeting and entitled to vote may adjourn such meeting. When a meeting is adjourned to another time or place, it shall not be necessary to give any notice of the adjourned meeting other than an announcement at the meeting at which the adjournment is taken. If a quorum is present or represented at such adjourned meeting, any business may be transacted which might have been transacted at the meeting as originally notified. However, if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each member of the Association entitled to vote at the adjourned meeting.

**2.07 Voting.** When a quorum is present at any meeting, a majority of the eligible Association vote shall decide any question brought before such meeting, unless the question is one upon which, by express provision of law, of the Articles or of these Bylaws, a different vote is required, in which case such express provision shall govern and control. No member shall be entitled to vote on any matters brought before the membership if such member is more than thirty (30) days delinquent in the payment of assessments or if such member's voting privileges have been suspended pursuant to these Bylaws or the Declaration. For all purposes of these Bylaws, the term "eligible Association vote" shall refer to the votes of all members of the Association whose voting privileges have not been so suspended or revoked.

**2.08 Proxy.** Any member of the Association may appear at any meeting of the members and cast his or her vote by written proxy duly executed by the member and setting forth the meeting at which, or the time period during which, the proxy is valid. All proxies must be signed and dated by the member giving the proxy. Proxies must be delivered to the Board before or at any meeting at which the same is to be used. Proxies may be revoked only by written notice delivered to the Board, except that: (a) the presence in person by any member at a meeting for which a proxy has been given by that member shall automatically invalidate the proxy for that meeting; and (b) a proxy shall automatically be deemed invalidated by any subsequently dated proxy. Notwithstanding anything to the contrary contained herein, no member may vote

by proxy if such member's voting privileges have been suspended or revoked, and no holder of a proxy may exercise that proxy if he or she is a member whose voting privileges have been suspended or revoked.

**2.09 Consent of Members.** Any action required or permitted to be taken at a meeting of the members of the Association may be taken without a meeting if a written consent, setting forth the action so taken, shall be signed by those persons who would be entitled to vote not less than the minimum number of votes necessary to authorize such action at a meeting at which all members entitled to vote were present and voted. Within ten (10) days following the taking of a corporate action without a meeting by less than the unanimous written consent of the members pursuant to this Section, notice shall be given to those persons or entities who were members as of the record date and who were not represented on the written consent. For purposes of this Section only, the record date shall be the date on which the consent is first executed, and the action shall be deemed taken when such consent is executed by the last necessary signature, unless another effective date is specified by the terms of such written consent. A written consent executed pursuant to this Section shall have the same force and effect as a vote at a meeting of the members represented on the executed consent. Any article or document filed with the Georgia Secretary of State referencing a member consent executed pursuant to this Section shall state, if true, that the notice required by this Section has been given.

**2.10 List of Members.** The Association shall keep at its registered office, a record of the owners of all Units in the Condominium, giving their names and the address of each. The officer who has charge of the books of the Association shall prepare and make, before every meeting of members of the Association or any adjournment thereof, a complete list of the members entitled to vote at the meeting or any adjournment thereof, arranged in alphabetical order, with the address of each. The list shall be produced and kept open at the time and place of the meeting and shall be subject to inspection by any member during the whole time of the meeting for the purposes thereof. The said list may be the Association's official record of members if it is arranged in alphabetical order or contains an alphabetical index.

### ARTICLE III BOARD OF DIRECTORS

**3.01 Powers.** Except as otherwise provided by the Declaration or any legal agreement among the members of the Association, the property, affairs and business of the Association shall be managed and directed by its Board of Directors, which may exercise all powers of the Association and do all lawful acts and things which are not by law, by the Declaration or any legal agreement among the members of the Association, by the Articles or by these Bylaws, directed or required to be exercised or done by the members. Without limiting the generality of the foregoing, the Board shall have the power to enact rules and regulations to govern use of the Condominium and the Units, consistent with the Declaration, and shall have the power to enforce the same to the greatest extent allowed under the Declaration and the Condo Act. In addition, the Board shall have the right to contract with any other party for the performance of various duties and functions.

**3.02 Selection and Qualifications.** The directors shall be appointed by the Declarant, and shall serve at the pleasure of the Declarant, until the earlier of (a) the sale or transfer of a Unit by the Declarant, after which the Declarant owns less than twenty percent (20%) of the total Unit Owners' interest in the Common Elements; (b) within one hundred twenty (120) days after the sale or transfer of a Unit by the Declarant, after which the Declarant owns less than twenty-five percent (25%) of the total Unit Owners' interest in the Common Elements; (c) the Declarant's relinquishment, in writing, of the right to appoint directors; or (d) seven (7) years from the date of filing of the Declaration. Thereafter, the directors shall be elected by plurality vote at the annual meeting of the members of the Association, except as hereinafter provided. Directors shall be natural persons who have attained the age of eighteen (18) years. Except

during the period of Declarant control, each director must be a resident of the State of Georgia and either (i) a member in good standing of the Association, (ii) the spouse or cohabitant of a member in good standing, (iii) the tenant of a Unit owned by a member in good standing, or (iv) the authorized representative of a member in good standing which is a corporation or other such legal entity. For purposes of this Article III, the "cohabitant" of an member shall mean someone who occupies that member's Unit, along with the member, as his or her primary residence on an indefinite basis. Except during the period of Declarant control, no more than one (1) owner, spouse, cohabitant, tenant or other representative of any one Unit may serve on the Board at the same time.

**3.03 Number and Term.** The number of directors of the Association shall be one (1) during the period of Declarant control, as described in Section 3.02 above, and three (3) thereafter. The number of Directors may be increased or decreased from time to time by resolution of the holders of at least a majority of the authorized votes of the Association, subject to the provisions of these Bylaws, provided that no decrease in the number of directors shall have the effect of shortening the term of an incumbent director. Initially upon turnover by the Declarant, two (2) of the directors shall be elected to serve two (2) year terms, and the third director shall be elected to serve a one (1) year term. Thereafter, each director elected shall hold office for a term of two (2) years, or until his or her successor is elected and qualified, or until his or her earlier resignation, removal from office, or death.

**3.04 Vacancies.** Vacancies, including vacancies resulting from any increase in the number of directors, but not including vacancies resulting from removal from office by the members of the Association, may be filled by a majority of the directors then in office, though less than a quorum, and a director so chosen shall hold office until the next annual meeting of the members. If there are no directors then remaining in office, such vacancies shall be filled by election of the members at the next annual meeting or at a special meeting called for such purpose or by written consent of the members.

**3.05 Meetings of the Directors.** The Board of Directors shall hold an annual meeting, without call, immediately after the annual meeting of the members of the Association. By resolution, the Board may establish a date or dates on which regular meetings of the Board or any committee shall be held between annual meetings. Special meetings of the Board may be called at any time by the President or by any two (2) directors.

**3.06 Place of Meetings.** Meetings of the Board of Directors or committees of the Board shall be held at any place within the State of Georgia as the Board may designate by resolution, or if no resolution is in force, then at the registered office of the Association, or at such other place as the annual meeting of the members shall have been held immediately preceding such meeting, or at such other place as shall have been designated in the notice of the meeting.

**3.07 Notice Requirements.** Notice of annual and other regular meetings of the Board of Directors or any committee need not be given. Notice of any special meeting, setting forth the place and the day and hour of the meeting, shall be given to each director or committee member, as the case may be, by oral, telegraphic, telephonic, electronic or written notice given to each director or committee member personally not less than three (3) days before the meeting, or by written notice deposited in the United States mail, first class postage prepaid, postmarked at least five (5) days prior to the date of the meeting. Neither the business to be transacted at, nor the purpose of any regular or special meeting, need be specified in the notice or any waiver of notice.

**3.08 Waiver of Notice.** Attendance by any director at a meeting of the Board or any committee shall constitute a waiver of notice of such meeting and waiver of all objections to the place and time of the meeting, or to the manner in which it has been called or convened, except when the director states, at the

beginning of the meeting, any such objection or objections to the transaction of business. Whenever the Board or any committee of the Board is authorized to take action only after notice to its members, the action may be taken with notice to fewer than all such members if at any time prior to completion of the action, the member or members not receiving such notice submits to the Board or committee, as the case may be, a signed waiver of notice.

3.09 Quorum. At all meetings of the Board or any committee of the Board, a majority of members shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which there is a quorum shall be the act of the Board or of the committee, as the case may be, except as may be otherwise specifically provided by law, by the Articles or by these Bylaws. Common or interested members may be counted in determining the presence of a quorum at a meeting of the Board or a committee, as the case may be, and a quorum is not broken by the subsequent withdrawal of any of those present. If a quorum shall not be present at any meeting of the Board or a committee, the members present at such meeting may adjourn the meeting without notice, other than announcement at the meeting, until a quorum shall be present.

3.10 Presumption of Assent. A director who is present at a meeting of the Board or any committee thereof, shall be presumed to have concurred in any action taken at the meeting, unless such director's dissent to such action shall be entered in the minutes of the meeting, or unless such director shall submit his or her written dissent to the person acting as the Secretary of the meeting before the adjournment of the meeting or shall forward such dissent by registered or certified mail to the Secretary of the Association within twenty-four (24) hours after the adjournment of the meeting. Such right to dissent shall not apply to a director or committee member who, being present at the meeting, failed to vote against such action.

3.11 Action by Consent. Unless otherwise restricted by the Articles or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board or the committee, as the case may be, consent thereto in writing, setting forth the action so taken, and the writing or writings are filed with the minutes of the proceedings of the Board or committee. Such consent shall have the same force and effect as a vote taken at a meeting of the Board or the committee, as the case may be.

3.12 Removal of Directors. At any meeting of the members of the Association with respect to which notice of such purpose has been given, any director may be removed from office, with or without cause, by a majority of the eligible Association vote, and his or her successor may be elected at the same or any subsequent meeting of the members; provided that to the extent any vacancy created by such removal is not filled by such an election within sixty (60) days after such removal, the remaining directors shall, by majority vote, fill any such vacancy.

3.13 Compensation of Directors. Directors shall not be entitled to compensation, but may be reimbursed for authorized expenses reasonably incurred either on behalf of the Association or in connection with the performance of their duties as directors.

#### ARTICLE IV OFFICERS

4.01 Designation. The officers of the Association shall be chosen by the Board of Directors and shall include a President, a Secretary and a Treasurer. No more than two (2) offices may be held by the same person except during the period of Declarant control. The Board of Directors may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise

such powers and perform such duties as shall be determined from time to time by the Board. Election or appointment of an officer shall not of itself create any contract or other rights to such office or to any compensation payable by virtue thereof.

4.02 Qualifications. Officers shall be natural persons who have attained the age of eighteen (18) years. Except during the period of Declarant control, officers must be members of the Board of Directors of the Association.

4.03 Compensation. The officers of the Association shall not be entitled to any compensation, but may be reimbursed for authorized expenses reasonably incurred either on behalf of the Association or in connection with the performance of their duties as officers.

4.04 Term of Office. Unless otherwise provided by resolution of the Board of Directors, the principal officers shall be chosen annually by the Board at the first meeting of the Board following the annual meeting of members of the Association, or as soon thereafter as is conveniently possible. Each officer shall serve for a term of two (2) years, or until his or her successor shall have been chosen and qualified, or until his or her death, resignation or removal.

4.05 Removal. Any officer may be removed from office at any time, with or without cause, by action of the Board of Directors whenever in its judgment the best interest of the Association will be served thereby.

4.06 Vacancies. Any vacancy in an office resulting from any cause may be filled by the Board of Directors at its annual meeting or at a special meeting called for such purpose.

4.07 Powers and Duties. Except as hereinafter provided, the officers of the Association shall each have such authority and perform such duties in the management of the Association as usually appertain to such officers of nonprofit corporations, except as may be otherwise prescribed by the Board of Directors. In addition, the Board may grant special powers or authority to any officer or officers by resolution or other action.

(a) President. The President of the Association shall exercise general supervision and control over all the business and affairs of the Association, shall see that all resolutions of the Board of Directors are carried into effect, and shall supervise the carrying out by the other officers of their respective duties.

(b) Secretary. The Secretary of the Association shall be the custodian of and shall maintain the corporate books and records of the Association; shall be the recorder of the Association's formal actions and transactions; shall attend all meetings of the Board of Directors and of the members; shall record all proceedings of such meetings in a book to be kept for that purpose; and shall give or cause to be given notice of all meetings of the members, all special meetings of the Board of Directors, and as otherwise required by law, the Articles or these Bylaws.

(c) Treasurer. The Treasurer of the Association shall be its chief fiscal officer and the custodian of its funds, securities and properties; shall keep full and accurate accounts of receipt and disbursements in books belonging to the Association and to deposit all monies and other valuable effects in the name and to the credit of the Association in such depositories as may be designated by the Board of Directors; and shall disburse the funds of the Association for proper expenses. Notwithstanding anything to the contrary herein, the signatures of two (2) officers shall be required on all checks written upon the Association's accounts.

ARTICLE V  
INDEMNIFICATION

5.01 General. The Association may indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that such person is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, if he or she acted in a manner which he or she reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful. However, notwithstanding anything to the contrary contained herein, no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

5.02 Successful Defense. To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 5.01 above, or in defense of any claim, issue or matter therein, then such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

5.03 Authorization. Any indemnification under Section 5.01 above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that the indemnification of the director, officer, employee or agent is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 5.01 above. Such determination shall be made: (a) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (b) if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested directors so directs by independent legal counsel in a written opinion; or (c) by the affirmative vote of at least seventy-five percent (75%) of the eligible Association vote.

5.04 Expenses in Advance of Disposition. Expenses of a proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that such person is entitled to be indemnified by the Association as authorized in this Article V.

5.05 Non-Exclusive Remedy. The indemnification and advancement of expenses provided for hereunder shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any provision of these Bylaws, or any resolution or agreement, either specifically or in general terms, approved by the affirmative vote of the holders of at least seventy-five percent (75%) of the eligible Association vote taken at a meeting, the notice of which specified

that such Bylaws provision, resolution or agreement would be placed before the members of the Association, both as to action by a director, officer, employee or agent in his or her official capacity and as to action in another capacity while holding such office or position, except as otherwise provided in the Nonprofit Corporation Code. The indemnification and advancement of expenses provided or granted pursuant to this Section shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent, and shall inure to the benefit of the heirs, executors and administrators of such person.

5.06 Insurance. The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against such person and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify such person against such liability under the provisions of this Article V.

5.07 Notice. If any expenses or other amounts are paid by way of indemnification, otherwise than by court order or action by the members of the Association, or by an insurance carrier pursuant to insurance maintained by the Association, the Association shall, not later than the next annual meeting of members, unless such meeting is held within three (3) months from the date of such payment and, in any event, within fifteen (15) months from the date of such payment, send by first class mail to its members of record at the time entitled to vote for the election of directors, a statement specifying the persons paid, the amount paid, and the nature and status at the time of such payment of the litigation or threatened litigation.

## ARTICLE VI GENERAL PROVISIONS

6.01 Fiscal Year. The fiscal year of the Association shall be the calendar year unless otherwise fixed by resolution of the Board of Directors.

6.02 Seal. The corporate seal shall have inscribed thereon the name of the Association and the words "Corporate Seal." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. In the event it is inconvenient to use such a seal at any time, the signature of any otherwise authorized officer of the Association followed by the words "Corporate Seal" enclosed in parentheses, shall be deemed the seal of the Association.

6.03 Amendments. Except as otherwise provided herein, the members shall have the power to alter, amend or repeal these Bylaws, or to adopt new Bylaws, by vote of the holders of at least sixty-seven percent (67%) of the eligible Association vote, provided that, so long as the Declarant has the right to appoint directors hereunder, the Declarant's consent shall be required for any such amendment. All duly approved amendments to these Bylaws shall be executed in recordable form by the President and Secretary of the Association, and by the Declarant if required as provided above, and shall be recorded in the Fulton County, Georgia real estate records. No amendment to these Bylaws shall take effect until the recordation of the same.

Deed Book 51436 Pg 436  
Cathelene Robinson  
Clerk of Superior Court  
Fulton County, Georgia