

GEORGIA, FULTON COUNTY

Return to James E. Friese, Attorney, FRIESE LAW FIRM, LLC, Fourteenth Street, NE, Suite 400, Atlanta, GA 30309.

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STATE OF GEORGIA	}	
	}	Amendment to Declaration of Covenants
	}	and Restrictions for The Park At Fifth
	}	Townhouse Subdivision
COUNTY OF FULTON	}	

Reference: Deed Book 26866, Page 092; Declaration of Covenants and Restrictions For The Park At Fifth Townhouse Subdivision

WHEREAS, Atlas Project, LLC, a Georgia Limited Liability Company ("Declarant"), recorded a Declaration of Covenants and Restrictions for The Park at Fifth Townhouse Subdivision on June 14, 1999, in Deed Book 26866, Page 092, et.seq., of the Fulton County, Georgia records ("Original Declaration"); and

WHEREAS, a Final As-Built Survey was recorded on September 7, 1999, in Condominium Plat Book 11, Page 118 of the Fulton County, Georgia Public Deed Records ("Plat"); and

WHEREAS, §18, Paragraph (a) of the Original Declaration provides for amendment of that instrument by the consent of the members of the Piedmont at Fifth Townhouse Association, Inc. ("Association") holding at least two-thirds (2/3) of the total vote thereof; and

WHEREAS, as of the date of this Amendment, the Declarant is the sole member of the Association, constituting one hundred percent (100%) of the total vote thereof, and Declarant pursuant to §18, Paragraph (b) of the Declaration hereby expressly approves this Amendment; and

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CROSS REFERENCE

WHEREAS, the Declarant, by affixing its signature hereto, has duly assented and cast its vote in favor of this amendment; and

WHEREAS, Declarant intends to amend the Original Declaration to include the recording information for the Plat; and

WHEREAS, this Amendment does not alter, modify, change, or rescind any right, title, interest, or privilege expressly granted or accorded to the Construction Lender, as defined in the Original Declaration, by the Original Declaration without the consent of such Construction Lender; provided, however, in the event a court of competent jurisdiction determines that any provision of this Amendment does so affect the rights of such Construction Lender, then such particular provision shall not be binding on the mortgagee so involved, unless said mortgagee consents to that particular provision; and if such consent is not forthcoming, then the provision of the Original Declaration effective prior to this amendment shall control with respect to the affected Construction Lender;

NOW THEREFORE, § 1, Paragraph (20) of the Original Declaration is hereby amended as follows: The language "Plat Book \_\_\_\_\_ at Page \_\_\_\_\_" is hereby deleted, and the language "Condominium Plat Book 11 at Page 118" is hereby inserted in lieu thereof.

Except as herein modified, the Original Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has executed this Amendment under seal as of this 20<sup>th</sup> day of September, 1999.

Signed, sealed and delivered in the presence of:

[Signature]  
Witness  
[Signature]  
Notary Public

Atlas Project, LLC,  
Developer:

By: [Signature] [SEAL]  
Clifford Price, Manager



Return Original After Recording to James E. Friese, Attorney At Law, 201 Blakely Street, P.O. Box 525, Cuthbert, GA 31740.

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ANITA HILL  
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DECLARATION OF COVENANTS AND RESTRICTIONS

FOR

THE PARK AT FIFTH TOWNHOUSE SUBDIVISION

PREPARED BY:

JAMES E. FRIESE  
ATTORNEY AT LAW

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and other shrubbery, entrance gates and entranceways, driveways, and privacy walls and/or fences [hereinafter collectively referred to as the "Common Property"]; and

WHEREAS, Developer desires to subject the Restricted Property to certain covenants, restrictions and conditions in order to enhance and protect the value, desirability, marketability and attractiveness thereof; and

WHEREAS, Developer deems it desirable to create the Association to own, maintain and administer the Common Property, maintain the Common Property and certain portions of the Units; and to enforce the covenants and restrictions, and other terms, provisions and conditions, herein contained; and

WHEREAS, Developer intends that every Owner of a Townhouse Unit which is made subject to this Declaration does automatically and by reason of such ownership, and by reason of this Declaration, become a member of the Association and subject to the Rules and Regulations and subject to the assessments by the Association pursuant hereto;

NOW THEREFORE, the Developer declares that the properties which are made subject to this Declaration are and shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered, subject to the Covenants and Restrictions hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of such Restricted Property. Such Covenants and Restrictions are and shall be binding on all parties having and acquiring any right, title or interest in such Restricted Property or any part thereof and shall inure to the benefit of each Owner thereof.

§ 1. *Definitions and Rules of Construction.*

(a) Definitions. Unless the context requires otherwise, the terms used herein shall be as defined in this Declaration, the Articles of Incorporation, the Bylaws, and the other Association Instruments, and the following terms shall have the meanings ascribed to them hereinbelow:

(1) "Articles of Incorporation" shall mean the Articles of Incorporation of the Association as the same now exist or as may hereafter be amended.

(2) "Assessments" shall mean and include all Annual Assessments, Special Assessments and Specific Assessments assessed by the Association pursuant to the terms hereof and all other Assessments, fines, charges, fees or expenses lawfully assessed against a Townhouse Unit or Townhouse Owner pursuant to this Declaration, the Bylaws of the Association, or the Rules and Regulations.

(3) "Association" shall mean The Piedmont at Fifth Townhouse Association, Inc., a Georgia non-profit membership corporation formed for the purpose of exercising the powers of the Association under this Declaration, the Articles of Incorporation, the Bylaws, and the Georgia Non-Profit Corporation Code.

(4) "Association Instruments" shall mean this Declaration, the Articles of Incorporation, the Bylaws, and the Plat and Plans, all as may be hereafter supplemented and amended.

(5) "Board of Directors" or "Board" shall mean the Board of Directors of the Association, the members of which shall be elected from time to time as provided in this Declaration, the Articles of Incorporation, and the Bylaws. The Board of Directors shall be the governing body of the Association.

(6) "Bylaws" shall mean the Bylaws of the Association as the same now exist or as the same may hereafter be amended.

(7) "Commencement Date" shall mean the date on which the first Townhouse Unit in the Subdivision is conveyed to an Owner other than Developer.

(8) "Common Property" shall mean all portions of the Restricted Property other than the Townhouse Units, as identified on the Plat and Plans.

(9) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association together with all funds lawfully assessed for the creation or maintenance of reserves pursuant to the provisions of the Declaration, the Association Instruments, or the Bylaws.

(10) "Construction Lender" shall mean Regions Bank, 6600 Peachtree Dunwoody Road, 400 Embassy Row, Suite 210, Atlanta, Georgia 30328.

(11) "Developer" shall mean Atlas Project, LLC, a Georgia Limited Liability Company, and its successors and assigns in interest who come to stand in the same relation to the Restricted Property or the Subdivision.

(12) "Declaration" shall mean this Declaration of Covenants and Restrictions For the Park at Fifth Townhouse Subdivision, as such may be amended from time to time.

(13) "First Mortgage" shall mean any first priority mortgage, deed to secure debt, deed of trust, or other instrument conveying a lien upon or security title to a Townhouse Unit. A "First Mortgagee" shall be the holder, beneficiary or grantee of any such First Mortgage.

(14) "Loan Documents" means the Construction Loan Agreement, the Note, the Mortgage, the Construction Assignment, and any and all other documents, instruments, and certificates, required to be executed and/or delivered by Developer to Construction Lender in connection with the Construction Financing made available by Construction Lender to Developer as contemplated in the Construction Loan Agreement dated August 6, 1998, by and between Atlas Project, LLC, as "Borrower", and Regions Bank, as "Lender", and the term Loan Documents as used in this Declaration shall have the same meaning as the term Loan Documents in said Construction Loan Agreement.

(15) "Managing Agent" shall mean the person, company, or other legal entity who undertakes the duties, responsibilities, and obligations of the management of the Association. The Managing Agent may be employed and terminated by a vote of the Board of Directors of the Association, subject to any contract as might exist.

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(16) "O.C.G.A." means the then current Official Code of Georgia Annotated (Michie, 1982).

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

(18) "Owner" or "Unit Owner" shall mean and refer to one or more persons, including Developer, who or which owns fee simple title to any Townhouse Unit, excluding, however, those persons having such an interest solely as security for an obligation.

(19) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust or other legal entity, or any combination thereof.

(20) "Plat and Plans" shall collectively mean the final "as-built" plat of survey recorded in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_ in the Fulton County, Georgia, Public Records, together with those plans and specifications of Townhouse Units for The Park @ Fifth Subdivision as prepared by Hall Stone Architects and identified as Job No. 98149, and as the same are recorded in the Fulton County, Georgia Public Records in \_\_\_\_\_.

(21) "Restricted Property" shall mean and refer to the real property hereinabove described and known or to be known as The Park At Fifth Townhouse Subdivision, together with the improvements constructed thereon, or to be constructed thereon, in accordance with the Plat and Plans, and hereby made subject to this Declaration.

(22) "Rules and Regulations" shall mean the then current Rules and Regulations of the Association as may be adopted by the Board of Directors in accordance with this Declaration and the ByLaws.

(23) "Subdivision" shall mean The Park At Fifth Townhouse Subdivision.

(24) "Unit" or "Townhouse Unit" shall mean an individual Townhouse as shown on the Plat and Plans, consistent with §2 below.

(25) "§" means Section, and "§§" means Sections.

(b) Rules of Construction. The following rules of construction shall apply in construing and interpreting this Declaration:

(1) Pronouns. Any pronoun used herein shall be deemed to cover all genders, as the context requires.

(2) References. All references herein to particular parts, sections, paragraph numbers or other designations are references to parts, sections or paragraph numbers or other designations of this Declaration. "Herein", "hereby", "hereunder", "hereof", "hereinbefore", "hereinafter", and other equivalent words refer to this Declaration and not solely to the particular portion

thereof in which any such word may be used, unless specifically stated in such particular portion to the contrary.

(3) Number. The singular shall include the plural and the plural shall include the singular, where the context requires or permits.

(4) Severability. Should any portion hereof be determined by any Court of competent jurisdiction, or otherwise, to be illegal or contrary to the Laws of the State of Georgia or the United States of America, then, in that event, all remaining portions hereof which are not so determined to be illegal, or contrary to the Laws of the State of Georgia or the United States of America, shall remain in full force and effect and shall be construed as if such illegal portion, or portion contrary to the Laws of the State of Georgia or the United States of America, were not included herein. If any provisions of this Declaration or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Declaration and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the maximum extent permitted by law.

(5) Governing Law. This Declaration shall be construed under the Laws of the State of Georgia and the applicable laws of the Federal Government of the United States of America existing at the time.

(6) Statutory References. Statutory references shall be construed as meaning the referenced statute or portion thereof as the same may exist from time to time.

(7) Titles and Captions. The paragraph or section titles at the beginning of each numbered paragraph or section of this Declaration, or other captions contained herein, are for convenience or reference only, and the words contained therein shall not be considered to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration, or to limit or describe the scope of this Declaration or the intent of any provision hereof.

(8) Interpretation. In all cases, the provisions set forth and provided for this Declaration shall be construed together and given that interpretation or construction which, in the opinion of the Board of Directors of the Association, will best effect the intent of the general plan of the Restricted Property.

§ 2. *Units*.

The Townhouse Units are depicted on the Plat and Plans. The plat shows the Restricted Property and the location of the boundaries of the townhouses located thereon. Each Townhouse Unit shall have the boundaries as depicted on said Plat and Plans and within such boundaries, each Townhouse Unit shall be and remain a separately owned fee simple Townhouse. Each Townhouse Unit shall be conveyed as a separately designated and legally described fee simple freehold estate subject to the terms, conditions, and provisions of this Declaration.

§ 3. *Common Property*

(a) Description of Common Property. The Common Property of the Subdivision shall consist of all portions of the Restricted Property not contained within the boundaries of the Units. The Common Property shall remain undivided and, prior to the Commencement Date, shall be conveyed, by Developer to the Association for the benefit, use and enjoyment of the Unit Owners. Each Owner may use the Common Property for the purposes for which it is intended, subject to any limitations stated herein, but no such use shall enter or encroach on lawful rights of the other Owners. In the event the Association is terminated or dissolved, the title and ownership of the Common Property shall devolve unto the then existing Owners of the Townhouse Units, so that each Unit's appurtenant percentage of undivided interest in the Common Property shall be equal to each other Unit's undivided interest, such undivided interest being calculated by a fraction having as its denominator the total number of existing Units in the Subdivision and as its numerator the number one (1).

(b) No Partition of Common Property. The Common Property shall remain undivided, and no Unit Owner or any other Person shall bring any action for partition or division of the whole or any part of the Common Property without the written consent of all Owners and all holders of all Mortgages encumbering any portion of the Restricted Property.

§ 4. *Association Membership and Allocation of Votes.*

All Unit Owners, by virtue of their ownership of a Townhouse Unit, are automatically mandatory members of the Association, and shall be entitled to vote on all matters upon which members of the Association are entitled to vote, pursuant to this Declaration and in accordance with the Bylaws. Subject to the provisions of the Association Instruments and the Bylaws, each Owner shall be entitled to one (1) vote for each Unit in which the interest required for membership is held, and each Unit is allocated a vote equal in weight to each other Unit. Membership shall not include Persons who hold a security interest only and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Townhouse Unit.

§ 5. *Association Rights and Restrictions; Variances*

(a) Association Rights and Restrictions. The Association, acting through its Board of Directors, shall have the right and authority, in addition to and not in limitation of all other rights it may have, to:

(1) make and enforce reasonable rules and regulations governing the use of the Restricted Property, including the Units and the Common Property;

(2) enforce use restrictions, other Declaration and ByLaws provisions, and the Rules and Regulations by imposing reasonable monetary fines, exercising self-help powers, and suspending use and voting privileges and services paid for as a Common Expense, as provided herein. These powers, however, shall not limit any other legal means of enforcing the use

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restrictions or the Rules and Regulations by either the Association or, in an appropriate case, by an aggrieved Owner;

(3) grant permits, licenses, utility easements and other easements, permits, or licenses necessary for the proper maintenance or operation of the Restricted Property under, through, or over the Common Property, as may be reasonably necessary to or desirable for the ongoing development and operation of the Restricted Property;

(4) control, manage, operate, maintain, replace and, in the board's discretion, alter or improve all portions of the Restricted Property for which the Association is assigned maintenance responsibility under this Declaration;

(5) deal with the Restricted Property in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of this Declaration;

(6) represent the Owners in dealing with governmental entities on matters related to the Common Property;

(7) permanently or temporarily close access to any portion of the Common Property with, except in emergency situations, thirty (30) days prior notice to all Owners. Provided, however, that the Owners may re-open the closed Common Property by a majority vote of the total Association vote, cast at a duly called meeting;

(8) enter Townhouse Units for maintenance, emergency, security, or safety purposes, or otherwise to discharge its powers or responsibilities hereunder, which right may be exercised by the Associations' Board of Directors, officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry into any Unit shall be only during reasonable hours and after reasonable notice to the Owner of the Unit;

(9) acquire, lease, hold, and dispose of tangible and intangible personal property and real property.

(b) Variances. Notwithstanding anything to the contrary contained in this Declaration, the Board of Directors shall be authorized to grant individual variances from any of the provisions of this Declaration, the ByLaws and the Rules and Regulations, if the Board of Directors determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development of the Restricted Property. No such variance shall be granted, however, unless at least a majority of the Owners agree thereto in writing.

§ 6. *Developer Control and Specific Developer Rights* .

(a) Developer Control. The Developer shall have the right to appoint and remove any member or members of the Board of Directors of the Association, and any officer or officers

thereof. The Developer's authority to appoint and remove members of the Board of Directors and officers of the Association shall expire: (a) on the date as of which all Units in the Subdivision shall have been conveyed by Developer to Unit Owners other than a person or persons constituting Developer; or (b) the Developer resigns Developer's rights to control pursuant to this Section in writing addressed to the Board of Directors; or (c) upon the expiration of three (3) years following the Commencement Date.

(b) Developer's Right to Transfer. Any or all of the special rights and obligations of the Developer set forth in this Declaration or the ByLaws may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in this Declaration or the ByLaws, or other Association Instruments, as applicable. Moreover, no such transfer shall be effective unless it is in a written instrument signed by Developer and duly recorded in the public records of Fulton County, Georgia.

(c) Developer's Rights During Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the ByLaws, Articles of Incorporation, the Rules and Regulations, the Association Instruments, and any amendments, so long as development and construction related to the initial sale of Townhouse Units shall continue, it shall be expressly permissible for Developer to maintain and carry on, upon such portion of the Restricted Property a Developer may deem necessary, such facilities and activities as in the sole opinion of Developer may be required, convenient, or incidental to Developer's development, construction, and sales activities of Units on the Restricted Property, including, but without limitation the following:

(1) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, and on the Restricted Property;

(2) the right to tie into any portion of the Restricted Property with driveways, parking areas and walkways;

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

(4) the right to carry on sales and promotional activities on the Restricted Property; and the right to construct and operate business offices, signs, construction trailers, residences, model residences, and sales offices. In this regard, Developer may use Townhouse Units as models and sales offices.

(d) Developer's Obligations With Respect to Reserved Easements. Rights exercised pursuant to the above-stated reserved easements 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 its sole expense.

(e) Agreements During Period of Developer Control. All contracts or leases executed by or on behalf of the Association during the period in which the Developer has the right to appoint the Directors and officers of the Association hereunder shall contain a termination clause permitting the Association to terminate the contract or lease at any time, without cause and without penalty, upon not more than ninety (90) days' written notice.

(f) Amendments to this Section. This §6 shall not be amended without the Developer's express written consent so long as the Developer owns any portion of the Restricted Property, primarily for development and/or sale.

§ 7. *Maintenance Responsibilities.*

(a) Specific Responsibilities of the Association. The Association's maintenance responsibilities shall include the following specific items:

(1) maintenance, repair, and replacement, subject to any insurance then in effect, of the Common Property, including, but not limited to, all Common Property landscaping and grassy areas not included within a Unit, all roads, sidewalks and other concrete and paved areas, not included within a Unit, all privacy or security fences or walls, and gates associated therewith, the entry feature, and any controlled access gate;

(2) maintenance and repair of all water and sewer pipes or facilities which serve more than one (1) Unit to the extent that such pipes and facilities are not maintained by the Unit Owner as set forth below or by public, private, or municipal utility companies; and

(3) maintenance and repair of the following portions of the Units:

(i) all roof surfaces, portions of roofs above the uppermost surface of the decking, and all gutters;

(ii) all exterior building and trim painting;

(iii) all lawn, garden, tree and shrubbery maintenance.

(b) Exclusions from Association's Maintenance Responsibility. Specifically excluded from such Associations maintenance responsibility shall be the following:

(1) HVAC or similar equipment located outside Unit boundaries;

(2) all doors (including screen, storm and garage doors), hinges, frames, locks, and hardware which are part of the entry system, except the Association shall paint the exterior portion of the front door and the garage doors;

(3) hoses, vents or water spigots contained in exterior walls of a Townhouse Unit;

(4) lighting fixtures pertaining to a particular Unit and being located outside an entryway or in a garage;

(5) window screens, frames, hardware and glass;

(6) foundations and footings including waterproofing above and below grade;

(7) pipes which serve only one Unit located within the Unit's boundaries or, if located in the front yard on the Unit, outside the Unit's boundaries, the portion of the pipe from the cutoff valve serving the Unit to the Unit itself, including the cutoff valve serving the Unit; and

(8) all improvements made by any Owner.

(c) Limits on Association's Liability for Maintenance. Notwithstanding any provision herein contained to the contrary, the Association shall not be liable for injury or damage to any person or property:

(1) caused by the elements or by any Unit Owner or by any other person;

(2) resulting from any rain, water, snow or ice which may leak or flow from any portion of the Common Property;

(3) caused by any pipes, plumbing, drains, conduits, equipment or utility lines or facilities, the responsibility for the maintenance of which belongs to the Association, coming out of repair or otherwise leaking.

(4) for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Restricted or Common Property by the Owner of any Unit or such Owner's Occupant, guest, or family;

(5) for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this §7 where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities; or

(6) 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, order or directive of any municipal or other governmental authority.

(d) Additional Maintenance Responsibilities of the Association. Upon resolution of the Board of Directors and approval of a Majority of the members present or represented by proxy at a duly constituted meeting of the members, the Association may assume responsibility for providing additional exterior maintenance upon Unit improvements. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association where the Board has determined that such maintenance would benefit all Owners.

(e) Willful or Negligent Act of Owner. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association, is caused through the willful or negligent act of an Owner, or such Owner's family, guests,

lessees, or invitees, and is not completely covered or paid for by insurance, then the Association may perform the maintenance, repair or replacement at the expense of the Owner, and all costs shall be specifically assessed against the Owner and shall be added to and become a part of the assessment obligation of the Owner and shall become a lien against the Unit.

(f) Authority of Association to Delegate Maintenance Responsibilities. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

(g) Owner's Maintenance Responsibilities. All maintenance of a Unit not specifically assigned as a responsibility of the Association herein shall be the responsibility of the Owner thereof. In addition, the Owner shall maintain all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit and which are located within the Unit's boundaries or, if located outside the Unit's boundaries, the portion of the pipe from the cutoff valve serving the Unit (including all gas, electricity, water, sewer and air conditioning pipes, lines, ducts, conduits and other apparatus and the cut off valves for same serving only the Unit). The Owner shall also maintain and repair all doors and windows on the Unit, except for the painting of the front door and the garage doors, which shall be the Association's responsibility. Such maintenance shall be performed consistent with this Declaration and the Plat and Plans of the Subdivision. Any maintenance which involves an exterior change, including, without limitation: landscaping and planting or repainting of the exterior of improvements in a different color, shall require prior approval of the Board of Directors. (See Also "Architectural Controls" under §10 hereof.)

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

(i) Duties of Owner With Respect to Maintenance. Each Owner shall be obligated to:

(1) perform such Owner's responsibility in such manner so as not to unreasonably disturb other persons in other Units;

(2) promptly report to the Association or its agent any defect or need for repairs, for which the Association is responsible;

(3) Not make any alterations in the portions of the Unit which are to be maintained by the Association or to remove any portion thereof or to make any additions thereto or do anything with respect to the exterior or interior of the Unit which would or might jeopardize or impair the safety or soundness of any Unit without first obtaining the written consent of the Board of Directors of the Association and all Unit Owners and Mortgagees of the Units affected, or impair any easement without first obtaining written consent of the Association and of the Unit Owner or Owners and their Mortgagees for whose benefit such easement exists; and

(4) pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Unit Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Unit Owner, or such Owner's family, tenants or guests, with the cost thereof to be a specific assessment against the Unit pursuant to §8(e) hereof.

(j) Owner's Failure to Perform Maintenance Responsibility. If the Board of Directors determines that: (1) any Owner has failed or refused to discharge properly the Owner's obligation with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder; or (2) that the need for maintenance, repair, or replacement which is the Association's responsibility hereunder is caused through the willful or negligent act of any Owner, or such Owner's family, guests, lessees, or invitees, and is not covered or paid by insurance, in whole or in part, then, except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. In the case of (1) above where the Owner has not discharged such Owner's responsibility, unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board determines that an emergency exists or that an Owner has not complied with the demand given by the Association as herein provided, or that the need for maintenance or repair is the Association's responsibility hereunder, as in the case of (2) above, then the Association may provide any such maintenance, repair or replacement at the Owner's sole cost and expense, and such costs shall be a specific assessment against the Unit.

(k) Authority of the Board To Require Maintenance by Owner. The Board of Directors, upon resolution, shall have the authority to require any Unit Owner to do any act or perform any work involving portions of the Restricted Property which are the maintenance responsibility of the Unit Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage to the Restricted Property, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all Owners to turn off cutoff valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes; requiring Owners to install smoke detectors; requiring Owners to make improvements to the Owner's Unit; and such other measures as the Board may reasonably require so long as the cost of such work does not exceed five hundred (\$500.00) dollars per Unit in any twelve (12) month period. In addition to, and not in limitation of, any other rights the Association may have, if any Unit Owner does not comply with any reasonable requirement made by the Board of Directors pursuant to this §7(k), the Association, upon fifteen (15) days' written notice (during which period the Unit Owner may perform the required act or work without further liability), may perform such required act or work at the Unit Owner's sole

cost and expense. Such cost shall be specifically assessed against the Owner and shall be added to and become a part of the assessment obligation of such Unit Owner and shall become a lien against the Unit and shall be collected in the manner provided for collection of assessments. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to §7(k), including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

(l) Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary as the composition of the Board of Directors changes. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Section. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

§ 8. Assessments and Allocation of Liability for Common Expenses.

(a) Creation of Lien and Personal Obligation. Each Owner of any Townhouse Unit covenants and agrees to pay to the Association the assessments and charges as provided for by this Declaration. All such Assessments and other charges shall, from the time they become due and payable, be a charge against and continuing lien upon the Townhouse Unit in favor of the Association and shall be the personal obligation of the Owner or Owners of such Unit at the time the Assessment becomes due. Each Owner of any Unit, by acceptance of a deed conveying a Unit, whether or not it be expressed in such deed, is deemed to covenant and agree to pay to the Association such Assessments as levied. No Unit Owner may waive or otherwise escape liability for such Assessments by non-use of the Common Property or abandonment of such Owner's Unit. Each Unit Owner shall be liable for each Assessment coming due while he or she is the Owner of the Unit. The personal obligation for delinquent Assessments shall not pass to successors in title or interest unless assumed by them, or required by applicable law. In the event that the holder of a First Mortgage or a secondary purchase money mortgage (provided that neither the grantee nor any successor grantee on the secondary purchase money mortgage is the seller of the Unit) or any other person acquires title to any Unit as a result of foreclosure or any such mortgage or by deed in lieu thereof, such holder or other person and the successors, successors-in-title and assigns of such holder or other person, shall not be liable for, nor shall such Townhouse Unit be subject to a lien for, any Assessment or charge hereunder chargeable to such Townhouse Unit on account of any period prior to such acquisition of title; provided, however, that such unpaid share of an Assessment or Assessments shall be deemed to be Common Expenses collectable from the Owners of all Units, including the Unit acquired at the foreclosure sale or by deed in lieu of foreclosure. In the event the Association acquires title to a Unit, the Association shall be exempt from all Assessments during the Period of its ownership thereof.

(b) Annual Assessments for Common Expenses. The amount of all Common Expenses not specially or specifically assessed pursuant to the provisions of this Declaration shall be allocated equally among and between all Units existing in the Subdivision. Each Unit Owner shall be

obligated to pay the Annual Assessment to the Association in equal monthly installments in advance on or before the first day of each month, or in such other reasonable manner as the Board of Directors shall designate. From and after the Commencement Date, the Annual Assessment applicable to each Unit shall be as set forth in the budget for the Subdivision delivered to each purchaser of a Unit. Not later than thirty (30) days before the end of each ensuing fiscal year, the Board of Directors of the Association shall prepare and submit in writing to the Unit Owners an estimated budget of the Common Expenses for the ensuing fiscal year, together with notice of the amount of the Annual Assessment based on such budget payable by each Unit Owner during the new fiscal year. If the estimated budget proves inadequate for any reason, the Board of Directors may levy at any time a further Assessment against the Unit Owners and notify the Unit Owners accordingly. If for any reason an annual budget is not made as required hereby, a payment in the amount required by the last prior Assessment shall be due on the first day of each month until changed by a new Assessment. Notwithstanding the foregoing, any increase in the Annual Assessment in excess of a percentage equal to the annual rate of inflation as measured by the Consumer Price Index for all Urban Consumers for the immediately preceding twelve (12) month period may be disapproved by the Unit Owners holding a majority of the Association vote.

(c) Definition of Common Expenses. Common Expenses shall include, without limitation, the following:

(1) any management fees and expenses of administration, including management, legal and accounting fees;

(2) utility charges for any utilities serving the Common Property and charges for other common services;

(3) the cost of any policies of insurance purchased for the benefit of all Unit Owners and the Association, including hazard coverage, public liability coverage, and such other insurance coverage as the Board of Directors determines to be in the best interest of the Association and the Unit Owners, or which is required by the terms, provisions and conditions contained in this Declaration;

(4) the expense of maintenance, operation and repair of to the Restricted Property which is the responsibility of the Association pursuant to the Declaration;

(5) such other charges as may be determined from time to time by the Board of Directors of the Association to be Common Expenses, including, without limitation, taxes and governmental charges such as sanitary taxes not separately assessed against each Unit, other than ad valorem real property taxes; and

(6) from and after the Commencement Date, the establishment and maintenance of a reasonable reserve fund or funds for maintenance, repair and replacement of the Common Property that must be replaced on a periodic basis and to cover operating contingencies or

deficiencies arising from unpaid Assessments or liens, emergency expenditures and other matters, as may be authorized from time to time by the Board of Directors.

(d) Special Assessments for Capital Improvements. In addition to the annual Assessment authorized above, and in addition to any special or specific Assessments for reconstruction or repair of casualty damage, the Board of Directors may levy Special Assessments for the purpose of defraying, in whole or in part, the cost of any capital addition to, capital improvement of, or repair or replacement of a portion of the Common Property (including the necessary fixtures and personal property attached thereto), which is for the benefit of all Owners in the Subdivision. Notwithstanding the foregoing, any Special Assessment per Unit in excess of an average of Two Hundred Dollars (\$200.00) per fiscal year shall require the approval of a majority of the Unit Owners. Unless the Special Assessment covers an expense which is charged to the Association on a "per Unit" basis, Unit Owners shall be assessed for Special Assessments under this Section in the same proportion as a Unit's undivided interest as determined in §3(a) hereof, and the due dates of any such Special Assessments shall be specified by the Board of Directors. So long as Developer shall own one or more Townhouse Units, no Special Assessments shall be levied against the Unit Owners pursuant to the provisions of this Section unless such Special Assessments shall also be approved by Developer.

(e) Specific Assessments. The Association shall have the power to specifically assess specific Units as, in the Board's discretion, shall be deemed appropriate, which specific Assessments shall become due as specified by the Board. Failure of the Association to exercise this authority shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Association's right to exercise such authority in the future with respect to any expenses, including an expense for which the Association has not previously exercised its authority. The costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments; costs incurred by the Association for insurance applicable to less than all Owners shall be a specific assessment against the Owner or Owners benefited; costs incurred to enforce the Use Restrictions contained in this Declaration shall be a specific assessment against the particular Owner or Owners involved; and fines levied pursuant to the Association's legal instruments shall be specific assessments. The Board also may specifically assess Units for the following Association expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association:

(1) Expenses of the Association which benefit less than all of the Units may be specifically assessed equitably among all of the Units which are benefited according to the benefit received.

(2) Expenses of the Association which benefit all Units, but which do not provide an equal benefit to all Units, may be assessed equitably among all Units according to the benefit received.

(3) Expenses of the Association which are occasioned by the conduct of less than all of those entitled to occupy all of the Units may be specifically assessed against the Unit or Units, the conduct of any occupant, licensee or invitee of which occasioned such expenses.

(f) Non-Payment of Assessments; Remedies of Association. In the event any Owner fails to pay any Assessment, or portion thereof, when due, all such Assessments, together with all late charges, interest, costs and reasonable attorneys fees in the maximum amount permitted by this Declaration or by Law shall be a charge against and continuing lien on the Unit. If any Assessment, or portion thereof, is not paid within ten (10) days after the due date, then a late charge, not in excess of the greater of ten Dollars (\$10.00) or ten percent (10%) of the amount of each delinquent Assessment or installment shall also be included in the lien and shall be due and payable to the Association. The lien for Assessments shall also include interest at a rate of ten percent (10%) per annum on any Assessment, installment, delinquency or late charge from the date such sum was first due and payable. The lien for Assessments shall further secure costs of collection, including court costs, the expenses of sale, any expenses required for the retention or preservation of the Unit, and reasonable attorney fees actually incurred. If any delinquent Assessment or portion thereof is not paid within ten (10) days after written notice is given to the Owner to make such payment, the entire unpaid balance of the Assessment may be accelerated at the option of the Board of Directors and may be declared due and payable in full, and proceedings may be instituted to enforce such lien. Such notice shall be sent by certified mail, return receipt requested, to the Unit Owner both at the address of the Townhouse Unit and at any other address or addresses the Unit Owner may have designated to the Association in writing, specifying the amount of the Assessments then due and payable, together with authorized late charges and interest accrued thereon.

(g) Statement From Association. Any Unit Owner, Mortgagee of a Unit or person having executed a contract for the purchase of a Townhouse Unit, or lender considering the loan of funds to be secured by a Townhouse Unit, shall be entitled upon request to a statement from the Association or its Managing Agent setting forth the amount of Assessments past due and unpaid (with late charges and interest applicable thereto) against the Townhouse Unit. Payment of a fee by the party requesting such statement in the amount of ten dollars (\$10.00) or such higher fee as may be authorized by the Board of Directors, shall be a prerequisite to the issuance of such a statement.

(h) Payment of Assessments by Developer. From and after the effective date of this Declaration and until the Commencement Date, the budget for payment of the Common Expenses of the Association shall be as determined annually by the Developer. Notwithstanding anything contained herein to the contrary, prior to the Commencement Date, Developer shall have the right, in lieu of paying money Assessments to the Association, to satisfy the Common Expense of the Association by direct payment to providers of services and materials or by the provision of in-kind services and materials and to receive a credit against such money Assessments for the reasonable value thereof. From and after the Commencement Date, Developer shall pay Assessments to the Association in respect to each Unit owned by Developer on the same basis as Owners other than Developer.

(i) Subordination of Assessments and Liens of Assessments to Mortgages.

(1) The liens and permanent charges of all assessments and charges authorized herein (annual, special or otherwise) with respect to the Restricted Property are hereby made

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subordinate to the lien of any first mortgage placed on such property if, but only if, all assessments and charges with respect to such property authorized herein having a due date on or prior to the date of the mortgage as filed of record have been paid. The liens and permanent charges hereby subordinated are only such liens or charges as relate to assessments and charges authorized hereunder having a due date subsequent to the date such mortgage is filed of record and prior the satisfaction, cancellation or foreclosure of such mortgage or the sale or transfer of the mortgage property pursuant to any proceeding in lieu of foreclosure or the sale of transfer of the mortgage property pursuant to a sale under power contained in such mortgage.

(2) Such subordination is merely a subordination and shall not relieve the Owner of the mortgaged property of such Owner's personal obligation to pay all assessments and charges coming due at any time when he or she is the Owner of a Townhouse Unit; shall not relieve such property from the liens and permanent charges provided for herein (except to the extent a subordinated lien or permanent charge is extinguished as a result of such subordination as against a mortgagee or such mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such property to the mortgagee or to any other person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of such property of any personal obligation or relieve such property or the then Owner of such property from liability for any assessment or charges authorized hereunder which become due after such sale and transfer.

(j) Application of Payments Received on Assessments. All payment received by the Association on account of assessments and charges related to assessments shall be applied first to costs and attorney's fees, then to late charges, then to interest, and then to assessments, applying the same to the oldest such assessments first.

(k) Commencement of Assessments. Assessments shall commence as to a Unit on the first day of the month following the month on which an Owner takes title. In addition to the regular assessments due and owing, upon the commencement of assessments, each Owner, other than Developer during the period Developer is entitled to control pursuant to §6 of this Declaration, shall be obligated to pay a one-time, non-refundable capital contribution to the Association equal to two months annual assessment then in effect, and such funds shall be held and used in accordance with §8(c)(6) of this Declaration. Upon sale of a Unit by an Owner, other than Developer during the time the Developer is entitled to control pursuant to §6 of this Declaration, the selling Owner shall be liable for all assessments then owing, to include the portion of the annual assessment due for the month of sale.

(l) Recording Lien For Assessments; Superiority of Lien. The Association shall be entitled to record any Assessment due by an Owner hereunder and not paid for a period of more than thirty (30) days as a lien against the Unit and the Owner in the Public Records of Fulton County, Georgia. The lien shall be superior to all other liens and encumbrances on the Unit of an Owner, except for (1) liens for ad valorem taxes; liens for Federal and State estate, gift and/or income taxes; (3) liens of years support, or (4) liens for all sums unpaid on a mortgage recorded prior to the recording of such lien. All persons acquiring liens or encumbrances on any Unit after this Declaration has been recorded in the Public Records of Fulton County, Georgia, unless

otherwise specified to the contrary herein, shall be deemed to consent that that their liens or encumbrances shall be inferior to future liens for assessments, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

(m) No Setoffs By Owners Against 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 Federal or State Law or Regulation, or any ordinance, order or directive of any municipal or other governmental authority. The obligation to pay such Assessments shall be a separate and independent covenant on the part of each Owner.

§ 9. *Easements.*

(a) Easements for Use and Enjoyment.

(1) Every Owner of a Unit shall have a right and easement of entry and exit, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Owner's Unit, subject to the following provisions:

(i) the right of the Association to limit the number of guests of Unit Owners and tenants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, or such Owner's family, tenants, guests, and invitees; and

(ii) the right of the Association to suspend the voting rights of an Owner for any period during which any assessment against such Owner's Unit which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Declaration, Bylaws, or Rules and Regulations; and

(iii) the right of the Association to borrow money as may be set forth in the Bylaws; provided, however, the lien and encumbrance of any such mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for any Unit or Unit Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Unit or other property located within the Restricted Property (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any Unit or Unit Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Unit or other property located within the Restricted Property.); and

(iv) the right of the Association to grant permits, licenses or easements across the Common Property, as authorized in this Declaration or the bylaws; and

(d) Easement for Maintenance. Developer expressly reserves a perpetual easement for the benefit of the Association across such portions of the Restricted Property, determined in the sole discretion of the Association, as are necessary to allow for the maintenance required pursuant to this Declaration. This maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property; and reasonable steps shall be taken to protect the Owner's property; and damage, if any, shall be repaired by the Person causing the damage at its sole expense.

§ 10. Use Restrictions.

To promote harmony among the Owners and thereby protect the value of the Units, all portions of the Restricted Property shall be subject to the restrictions set forth in this Section and to such supplemental Rules and Regulations as may be adopted from time to time by the Board of Directors. The use restrictions which follow in this Declaration are mandatory on all Owners unless and until changed by amendment to this Declaration duly filed in the Public Records in Fulton County, Georgia.

(a) Residential Use.

(1) Each Unit shall be restricted exclusively to residential use and no trade or business of any kind may be conducted in or from a Unit or any part of the Subdivision either as a primary or accessory use of either the Unit or any portion of the Subdivision; provided, however, an Owner or Occupant may conduct such business activities within the Unit so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the Unit; (ii) the business activity does not regularly involve persons or vehicles coming onto the Restricted Property who do not reside on the Restricted Property (other than by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services); (iii) the business activity does not include the storage or placement of any tools of a particular trade in any area which can be viewed from the Common Property; (iv) the business activity conforms to all zoning requirements for the Restricted Property; and (v) the business activity is consistent with the residential character of the development, does not require use of Common Element utilities and does not constitute a nuisance or a hazardous or offensive use, as may be determined in the sole direction of the Board of Directors. The terms "business" and "trade," as used in this paragraph, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the use of a Unit by an on-site management company operating on behalf of the Association shall not be considered a trade or business within the meaning of this §10(a)(1).

(2) If an Owner of a Lot is a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the Person(s) who will occupy the dwelling on the Lot. The designated Person(s) to occupy the



(2) The display or discharge of firearms or fireworks on the Common Property is prohibited; provided, however, that the display of lawful firearms on the Common Property is permitted for the limited purpose of transporting the firearms across the Common Property to or from the Owner's Lot. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A., §25-10-1.

(3) There shall be no obstruction of the Common Property, nor shall anything be kept, parked or stored on any part of the Common Property without the prior written consent of the Board of Directors, or except as specifically provided herein. If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Property or on the rights-of-way located on the Common Property in violation of this paragraph, then the Board may remove and either discard the personal property or store the personal property in a location which the Board may determine. If personal property is removed and/or stored in accordance with this paragraph, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein. Any such fine shall constitute a Specific Assessment under §8(e) hereof. The cost to the Association of any removal or storage pursuant to this paragraph shall also be a specific Assessment pursuant to said §8(e).

(4) No portion of the Common Property shall be removed, altered or changed at any time by any Owner without express written permission of the Board of Directors.

(e) Antennas and Satellite Dishes. No transmission antenna, of any kind, may be erected anywhere on the Restricted Property without written approval of the Board of Directors. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) larger than one meter in diameter shall be placed, allowed, or maintained upon any portion of the Restricted Property, including a Unit. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the Rules and Regulations authorized by the FCC, both as may be amended from time to time. Except as provided by this Section, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Restricted Property, whether attached to a Unit or otherwise; provided, however, that the Association shall have the right to, but shall not be obligated to, erect, construct and maintain such devices on Common Property for the benefit of all Owners.

(f) Vehicles. Except with special advance authorization by the Board of Directors, no vehicles shall be parked on the Common Property, and no vehicle repairs, other than emergency repairs or repairs of a minor nature needed to be performed to move a vehicle off the premises, shall be allowed on the Restricted Property. No vehicles shall be parked or stored on blocks or other such devices on the Common Property or other portions of the Restricted Property visible from the Common Property. No vehicles shall be parked so as to obstruct the roadways as may exist within the Subdivision. No boats, boat trailers, campers, canoes, vehicles used primarily for

recreational purposes, vehicles primarily used for commercial purposes, or vehicles with commercial writings on their exteriors shall be stored, allowed to remain, or repeatedly parked on the Restricted Property. The Association is expressly authorized to tow away, at an offending Owner's expense, any vehicle in violation hereof or which is placed on the Restricted Property in violation of the Rules and Regulations governing parking as may be adopted by the Board of Directors.

(g) Signs. Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected, placed, or permitted to remain on the Restricted Property without the prior written consent of the Board or its designee, except that one professional security sign not to exceed four (4") inches by four (4") inches in size may be displayed from within a Unit. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. The Board also shall have the authority to, but shall not be obligated to, adopt regulations permitting temporary signs announcing births, birthdays or other events for limited periods of time, or for allowing "For Rent" or "For Sale" signs under specific conditions.

(h) Nuisances. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Restricted Property, except in containers specifically designed for such purpose, nor shall any odors be permitted, so as to render any portion of the Restricted Property unsanitary, unsightly, offensive or detrimental to persons using or occupying other portions of the Restricted Property. No obnoxious or offensive activity shall be carried on, within or upon the Restricted Property, nor shall anything be done thereon which may become an annoyance to other Owners. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Restricted Property. Any siren or device for security purposes shall contain a device which causes it to automatically shut off within a reasonable time after sounding. The display or shooting of fireworks or firecrackers is expressly forbidden. Any Unit Owner, or such Unit Owner's family, servants, agents, invitees or guests, who shall dump or place any trash or debris upon any portion of the Restricted Property, except in the containers described above, shall be liable to the Association for the actual cost of the removal thereof or the sum of Twenty-five Dollars (\$25.00), whichever is greater, and the same shall constitute a specific assessment against the applicable Owner's Unit(s).

(i) Prohibited Activities. Obnoxious or offensive activity shall not be carried on in any Unit or in any part of the Common Property. Each Unit Owner, and such Unit Owner's family, visitors, invitees, guests, servants and agents, shall refrain from any act or use of such Owner's Unit or the Common Property which could reasonably cause embarrassment, discomfort, annoyance or nuisance to the Occupants of the Units, or which could result in the cancellation of or increase in the premiums for insurance on any Unit or any portion of the Common Property, or which could be in violation of any law or governmental code or regulation. The pursuit of hobbies or other activities, including, without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken on any portion of the Restricted Property.

(j) Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and other lawful Rules and Regulations applicable to the Restricted Property shall be observed. In the event of any conflict between any provision of any such governmental code, regulation or restriction and any provision of this declaration, the more restrictive provision shall apply.

(k) Architectural Standards.

(1) Except as otherwise provided herein, no Owner, Occupant, or any other person may, without first obtaining the written approval of the Board of Directors:

- (i) make any encroachment onto the Common Property;
- (ii) construct any improvement on a Unit,
- (iii) make any exterior change, alteration or construction on a Unit (including painting, regrading, or significant landscaping modifications), or
- (iv) erect, place or post any object, sign, clothesline, playground equipment, light, storm door or window, artificial vegetation, exterior sculpture, fountains, flags or other thing on the exterior of the Unit, in any windows of the Unit, or on any Common Property.

(2) The standard for approval of such improvements shall include, but not be limited to: (i) aesthetic consideration, (ii) materials to be used, (iii) harmony with the external design of the existing Units and structures, and the location in relation to surrounding structures and topography, and (iv) any other matter deemed to be relevant or appropriate by the Board.

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

(4) If the Board fails to approve or to disapprove such application within forty-five (45) days after the application and such information as the Board may reasonably require shall have been submitted, its approval will not be required and this will be deemed complied with; provided, however, even if the requirements of this §10(k) are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the Bylaws, the Rules and Regulations, or applicable zoning ordinances.

(5) This Article shall not apply to the activity of the Developer, nor to constructions or improvements or modifications to the Common Property by or on behalf of the Association.

(6) The Board may designate an Architectural Control Committee (ACC) to perform the functions of this §10(k).

(7) Each Owner acknowledges that the members of the Board and/or the ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the Board or the ACC, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(8) Any construction, alteration, or other work done in violation of this §10(k), the Declaration, the Bylaws, or the Rules and Regulations, shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the Unit as a specific Assessment pursuant to §8(e) hereof.

(9) In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this §10(k) and its decisions or those of the ACC.

(10) If any Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Property in violation of this §10(k), he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction remain on the Common Property without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction.

(11) The Board shall have the authority to record in the Public Deed Records of Fulton County, Georgia, notices of violation of the provisions of this §10(k).

(l) Lighting. No lighting shall be installed on the exterior of any Unit without the prior written consent of the Board of Directors, or unless the same be in accordance with the Rules and Regulations.

(m) Planting and Gardening. No planting or gardening shall be done or maintained upon the Restricted Property subjected hereto, except such planting and gardening as is approved by the Board of Directors.

(n) Vacant Units. Should a Unit become vacant, the Owner is responsible for securing the Unit while it is unoccupied, including engaging all locks, providing security lighting, and heating the interior sufficient to keep pipes from freezing.

(o) Unsightly or Unkempt Conditions. It shall be the responsibility of each Owner to prevent any unclean, unhealthy, unsightly or unkempt conditions from existing on or within such Owner's Unit. Any item such as outside patio furniture or other articles that can be viewed from the Common Property shall be maintained in a neat and attractive condition as determined by the Board of Directors.

(p) Exterior Appearance. No awnings, shades, screens, window air-conditioning units or fans, or other items shall be attached to, hung or used on the exterior of any window or door of a Unit or on the exterior of any building without the prior written consent of the Board of Directors. Further, no foil or other reflective material shall be used on any windows for sunscreens, blinds, shades or any other purpose. No burglar bars on windows or doors, whether on the interior or exterior thereof, shall be permitted. All shades, drapery linings and other window treatments visible from the exterior of a Unit on any window or door shall be white, off-white or such other color as shall be approved by the Board of Directors. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained on any portion of the Restricted Property, nor shall any clothing, rugs or any other item be hung on any railing enclosing any stairway, entrance, walkway, landing or patio.

(q) Garages. No garage may be converted to permanent living space. All garages shall be maintained in such a manner that parking for the maximum number of motor vehicles for which it was originally designed to hold is allowed and possible. No garage sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Restricted Property without prior written Board consent. If so permitted, any such activities shall be subject to all reasonable conditions that the Board may impose.

(r) Impairment of Units and Easements. An Owner shall do no act nor any work that will impair the structural soundness or integrity of any Unit or impair any easement or other interest in the Restricted Property, nor do any act nor allow any condition to exist which will adversely affect the other Units or their Owners or Occupants.

(s) Leasing of Units. For purposes of this Declaration leasing is defined as regular, exclusive occupancy of a Unit by any person(s) other than the Owner in an arrangement by which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. For purposes hereof, occupancy by a roommate of an Owner shall not constitute leasing. Leasing of Units shall be governed by the following use restrictions:

(1) Units may be leased only in their entirety; no fraction or portion of a Units may be leased without prior written Board approval.

(2) All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form which is deemed acceptable. There shall be no subleasing of Units or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than six (6) months, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Unit, the

Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Unit. The Owner must provide the lessee copies of the Declaration, Bylaws, and the Rules and Regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(3) Each Owner and each lessee, by occupancy of a Unit, covenants and agrees that any lease for a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Unit:

(i) The lessee shall comply with all provisions of the Declaration, Bylaws and Rules and Regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure such compliance. The Owner shall cause all Occupants of such Owner's Unit to comply with the Declaration, Bylaws, and the Rules and Regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any such violation. If the lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a Rule or Regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine may be assessed against the lessee in accordance with the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit. Any violation of the Declaration, Bylaws, or Rules and Regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the Rules and Regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Unit.

(ii) Use of Common Property. The Owner transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property.

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

obligation to make monthly rental payments to lessor. If lessee fails to comply herewith, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which such Owner would otherwise be responsible.

(iv) Terms herein shall have the meaning ascribed to them in the Declaration of Covenants and Restrictions for The Park At Fifth Townhouse Subdivision, as the same is recorded in the Public Records of Fulton County, Georgia.

(4) The provisions of this §10(s) shall not apply to any leasing transaction entered into by the holder of any first Mortgage on a Unit who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage.

(t) General Restrictions. No Unit Owner or Occupant shall commit or permit any violation of any insurance policy obtained and maintained by the Association or do or permit anything to be done, or keep or permit anything to be kept, or permit any condition to exist, which might reasonably (1) result in termination of such policy, (2) adversely affect the right of recovery thereunder, (3) result in reputable insurance companies refusing to provide insurance, or (4) result in an increase in the insurance rate or premium unless, in the case of such increase, the Owner responsible therefor shall pay the same.

#### § 11. *Additional Rights and Restrictions.*

In addition to the restrictions contained within the Declaration, the Board of Directors, in accordance with the Bylaws, shall have the right to make and to enforce reasonable Rules and Regulations governing the use of the Units and the Restricted Property and facilities located thereon. Copies of such Rules and Regulations and amendments thereto shall be furnished by the Association to all Unit Occupants prior to the effective date of such Rules and Regulations and amendments. Such Rules and Regulations shall be binding upon the Unit Owners and Occupants and their respective families, tenants, guests, invitees, servants, and agents until and unless any such Rule or Regulation is specifically overruled, cancelled, or modified by the Board of Directors or in a regular or special meeting of the Association by a vote of the Unit Owners, in person or by proxy, holding a majority of the total votes in the Association. This right shall include the right to impose and assess fines, and to enforce Rules and Regulations, as adopted, and as permitted by the provisions of this Declaration and the Association Instruments.

#### § 12. *Managing Agent.*

(a) The Board of Directors is hereby empowered to enter into a contract for the hiring of a Managing Agent to act on behalf of the Association and the Subdivision. Such Managing Agent shall be empowered as is herein and elsewhere in this Declaration, the Bylaws, and other Association Instruments provided. Any management contract shall contain a termination clause permitting termination, for cause or without cause, upon no more than a thirty (30) day written notice. The term of any such agreement may not exceed one (1) year, renewable by agreement of the parties for successive periods of no more than one (1) year each. All costs and expenses

incident to the employment of the managing agent shall be a Common Expense of the Association.

(b) The Managing Agent shall be and hereby is empowered to perform on behalf of the Owners, Board of Directors, and the Association, all rights, powers and privileges of the Board of Directors and the Association, as provided in this Declaration, the Bylaws and other Association Instruments, if any, unless the Board of Directors otherwise provides.

(c) Each Owner by acceptance of a deed to such Owner's Unit does ratify, confirm, accept and consent to the appointment of a Managing Agent.

(d) The Board of Directors may require that any managing agent of the Association handling Association funds, or responsible for Association funds, furnish an adequate fidelity bond covering such managing agent, and/or such managing agent's directors, officers, employees, servants and agents handling, administering, or entrusted with responsibility for funds of the Association.

§ 13. *Mortgagee's Rights.*

(a) Unless at least eighty percent (80%) of the First Mortgagees (based upon one (1) vote for each First Mortgage owned) or eighty percent (80%) of the votes in the Association have given their prior written approval, the Association shall not be entitled to:

- (1) by act or omission, seek to abandon the Common Property;
- (2) Unless otherwise provided herein, change the pro rata interest or obligation of any individual Townhouse Unit;
- (3) partition or subdivide any Townhouse Unit;
- (4) by act or omission, seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Property;
- (5) use hazard insurance proceeds for losses to any Restricted Property for other than the repair, replacement, reconstruction, or maintenance of such Restricted Property, or held by the Association pursuant to §14(h) hereof.

The provisions of this paragraph (a) shall not be construed to reduce the percentage vote that must be obtained from mortgagees or Unit Owners when a larger percentage vote is otherwise required by the Association Instruments.

(b) Any holder of a First Mortgage who obtained title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the Mortgage is not liable for such Unit's unpaid sum or charges which accrue prior to the acquisition of title to such Unit by the mortgagee.

(c) Upon written request to the Association, identifying the name and address of the holder and the Unit number or address, any holder, insurer or guarantor of a First Mortgage shall be an eligible mortgage holder and shall be entitled to any notices to which the Owner of the Townhouse Unit is entitled in the same manner and at the same time that such Owner is so entitled.

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

(e) In addition to the rights of mortgagees elsewhere provided above, each First Mortgagee of a Townhouse Unit who shall first file with the Association a written request, shall be entitled to receive notice of and to designate a representative to attend and observe all meetings of Unit Owners, but not meetings of the Board of Directors of the Association.

(f) Furthermore, each First Mortgagee of a Townhouse Unit which is an institutional lender (such institutional lender being defined herein as a bank, savings and loan association, insurance company, RIA approved mortgage lender, pension fund, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, mortgage banker, or other lender generally recognized in the community as an institutional lender) shall, upon request, be entitled to inspect the books and records of the Association during normal business hours.

#### § 14. *Insurance.*

(a) Insurance on Common Property. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property and other property which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the board may purchase "all-risk" coverage in like amounts. The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million Dollars (\$1,000,000.00). In addition, the Board shall obtain directors' and officers' liability coverage, worker's compensation insurance (if and to the extent necessary to satisfy the requirements of applicable laws), and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. The amount of fidelity coverage shall be determined in the directors' best business judgment, but if reasonably available, shall not be less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, subjected to

non-renewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

(b) Requirements of Policies. All insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, and shall be governed by the provisions set forth below:

(1) All policies shall be written with a company authorized to do business in Georgia.

(2) All policies on the Common Property shall be for the benefit of the Association and its members. Any policies covering Units shall be for the benefit of Owners and their mortgagees, as their interests may appear.

(3) 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 any settlement negotiations, if any related thereto.

(4) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(5) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available.

(6) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners and their respective tenants, servants agents, and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;

(iii) a statement that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

(iv) a statement that no policy may be canceled, subjected to non-renewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner, or any Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) a statement that no policy may be canceled, subjected to non-renewal or substantially modified without at least thirty (30) days' prior written notice to the Association.

(c) Individual Insurance. If the Association does not maintain insurance on the Units, each Owner, by virtue of taking title to a Unit subject to the terms of this Declaration, covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on the Unit and all structures constructed thereon and a liability policy covering damage or injury occurring on a Unit. If reasonably available, the casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage on such Owner's Units meeting the same requirements as set forth in §§14(b)(6)(i) and 14(b)(6)(iii), above. The policies required hereunder shall be in effect at all times. Upon request by the Association, an Owner shall furnish a copy of such Owner's insurance policy or policies to the Board. In the event that any Owner fails to obtain and maintain insurance, as required by this §14, the Association may purchase such insurance on behalf of the Owner and specifically assess the cost thereof to the Owner pursuant to §8(e) hereof.

(d) Owner's Responsibility to Repair Damage. Each Owner further covenants and agrees that in the event of damage and destruction of structures on such Owner's Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction or such other plans and specifications as are approved by the Board of Directors of the Association. The Owner shall pay any costs of repair or reconstruction which are not covered by insurance proceeds.

(e) 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 Property, the cost of the deductible may be apportioned equitably by the Association among the parties suffering loss in accordance with the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Unit Owner shall be responsible for paying the deductible pertaining to the Unit. If any Owner or Owners fail to pay the deductible when required herein to do, then the Association can pay the deductible and specifically assess the cost against the applicable Unit or Units.

(f) Casualty Losses. In the event of damage to or destruction of all or any part of the Restricted Property as a result of fire or other casualty, unless eighty (80%) percent of all Unit Owners other than Developer, including the Owner or Owners of the damaged Unit or Units, and the Developer (as long as the Developer is entitled to control pursuant to §6) vote not to proceed with the reconstruction and repair of the structure, the Board of Directors or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Unit Owner with respect to the distribution of proceeds to any such Unit.

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

(h) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board of Directors, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, a special assessment shall be made against all of the Unit Owners without the necessity of a vote of the members or compliance with §8(d) hereof. If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board of Directors. To the extent insurance proceeds are available, the Association may reconstruct or repair Owner improvements damaged as a result of fire or other casualty, but the decision to do so or not do so shall rest solely with the Board of Directors.

(i) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Subdivision and Units were originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board of Directors.

(d) Encroachments. Encroachments upon or in favor of Units which may be created as a result of reconstruction or repair necessitated by damage resulting from fire or other casualty, shall not constitute a claim or basis for any proceeding or action by the Unit Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Subdivision and the Units were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

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

#### § 15. *Rights of Construction Lender*

The terms and provisions of this Declaration, the conveyance of the Common Property to the Association as herein contemplated, and all rights, obligations, duties, liabilities, privileges,

burdens or benefits in favor of or owing to Developer or Owners pursuant to such terms and provisions herein contained, are hereby expressly made, shall be, and are subject to the lien and effect of the Loan Documents as hereinbefore defined, until and unless Construction Lender indicates to the contrary in writing. Nothing contained herein, unless expressly agreed to in writing by Construction Lender, shall alter, amend or change any of the terms, provisions and conditions of such Loan Documents. In the event of any conflict between the Articles of Incorporation, the ByLaws of the Association, or the terms and provisions of this Declaration, on the one hand, and the terms, provisions and conditions of the Loan Documents on the other, the terms, provisions and conditions of the Loan Documents shall in all instances control.

§ 16. *Duration.*

The covenants, conditions and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Developer, the Association, or the Owner of any Restricted Property subject to this Declaration, and their respective legal representatives, heirs, successors and assigns for the maximum time permitted under Georgia law unless terminated by proper procedure of the Owners. If it is determined that the covenants, conditions and restrictions set forth herein are limited in duration pursuant to *O.C.G.A.*, §44-5-60(b), then such covenants, conditions and restrictions shall be renewed in accordance with the procedures set forth in *O.C.G.A.*, §44-5-60(d). Such adoption shall be binding on all Owners, and each Owner of any Unit by acceptance of a deed therefor is deemed to agree that if Georgia Law limits the time period for the applicability of the covenants, conditions and restrictions herein, such may be extended as provided herein.

§ 17. *Association Obligation to Provide Subdivision Documentation.*

The Association shall be required to make available to Unit Owners, lenders and the holders, insurers and guarantors of the First Mortgage on any Unit, current copies of the Declaration, Bylaws and other Rules and Regulations governing the Subdivision, and other books, records and financial statements of the Association. The Association shall also be required to make available to prospective purchasers current copies of the its most recent annual audited financial statements, if such is prepared. "Available" shall mean, at a minimum, available for inspection upon request during normal business hours or under other reasonable circumstances.

§ 18. *Amendments.*

(a) Except as otherwise provided for herein, this Declaration may be amended by the affirmative vote, written consent, and any combination of the affirmative vote and written consent of the members of the Association holding at least two-thirds (2/3) of the total vote thereof.

(b) No amendment whatsoever, whether to this Declaration, the Association's Bylaws, or to any other Subdivision Instrument, shall alter, change, or modify any of the rights of the Developer without the written approval of the Developer.

(c) In the event a meeting is held to consider an amendment to this Declaration, notice of any meeting at which a proposed amendment will be considered shall state the fact that such amendment is to be considered, and the subject matter of the proposed amendment. Any member not present at a meeting at which an amendment is considered may evidence such member's consent to such amendment, thereafter, in writing. No amendment shall be effective until a certified copy is filed in the Office of the Clerk of the Superior Court of Fulton County, Georgia.

(d) Notwithstanding any provision in this Declaration which may be construed to the contrary, any amendment to this Declaration which would change, alter, modify or rescind any right, title, interest or privilege herein expressly granted to the holder of any First Mortgage affecting any of the Townhouse Units shall require the prior written approval of such holder. In the event that any amendment to this Declaration is construed as having changed, altered, modified or rescinded any right, title, interest or privilege granted to the holder of any First Mortgage affecting any Unit under the terms of the Declaration prior to such amendment, such provision shall be deemed not applicable to such holder and the provision otherwise governing as contained in the original Declaration shall be deemed controlling.

(e) Notwithstanding any provision in this Declaration which may be construed to the contrary, any amendment to this Declaration which would change, alter, modify or rescind any right, title, interest or privilege herein expressly granted to Construction Lender or would change, alter, modify or rescind any term or provision of the Loan Documents shall require the prior written approval of the Construction Lender. In the event that any amendment to this Declaration is construed as having changed, altered, modified or rescinded any right, title, interest or privilege granted to Construction Lender under the terms of the Declaration prior to such amendment or is construed as having changed, altered, modified or rescinded any term or provision of the Loan Documents, such amendment shall be deemed not applicable to the Construction Lender."

(f) The Association, by vote of the Board of Directors, is hereby empowered to amend the Association Instruments, the Articles of Incorporation, and the Bylaws of the Association, or any of them, in such respects as may be required to conform to any applicable statute of the State of Georgia or the United States of America, or to the terms of this Declaration, or to the rules, regulations and requirements of the Federal Home Loan Mortgage Corporation ("FHLMC"), or Federal National Mortgage Association ("FNMA").

§ 19. *General Provisions.*

(a) Enforcement.

(1) Each Owner and Occupant of a Unit thereon shall comply strictly with this Declaration, the Bylaws, and the Rules and Regulations, as any of the same may be amended from time to time. Any lack of such compliance shall be grounds for an action to recover sums due for damages, for injunctive relief, or for any other remedy available at law or in equity, maintainable by the Association or, in any proper case, by one or more aggrieved Owners, on

their own behalf or as a class action. If any Unit Owner shall, in the sole opinion of the Board of Directors, have an unresolved financial delinquency with respect to the Association, or otherwise be in violation of any provision of this Declaration, the Bylaws or any Rule or Regulation adopted by the Board of Directors, such Owner's vote shall be suspended during the period of such delinquency or violation and shall not be entitled to be cast or counted for any purpose. In addition to all other remedies set forth herein, the Association, or any duly authorized agent thereof, shall, after ten (10) days written notice, have the right to enter upon any portion of the Restricted Property where a violation exists and summarily abate or remove, at the expense of the violating Owner, using such force as may be reasonably necessary, any erection, thing or condition that may be or exist contrary to the intent and meaning of the provisions hereof. Notwithstanding the foregoing, the Association shall have the right to immediately tow, without any additional notice or period in which to correct such violation, any improperly parked or prohibited vehicle as identified herein or within the Bylaws or the Rules and Regulations. Neither the Association, nor its agents, shall be deemed guilty or liable for any manner of trespass for such entry, abatement or removal. Such notice may be given in person or in the manner provided for notices in the Bylaws of the Association.

(2) Should the Association employ legal counsel to enforce this Declaration, the Bylaws or the Rules and Regulations, all costs incurred in such enforcement, including reasonable fees actually incurred for counsel, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration and the Bylaws and such Rules and Regulations is essential for the effectuation of the general plan of the Subdivision and for the protection of present and future Owners, it is hereby declared that any breach thereof cannot be adequately compensated by recovery of damages, and that the Association, or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or threatened violation or breach. Further, in the event of any failure to comply strictly with this Declaration, the Bylaws or the Rules and Regulations, then, in addition to the foregoing remedies, the Board of Directors may levy fines against the Owner for such failure, provided that no fines may be levied, except as otherwise expressly set forth herein, for more than \$50.00 for any one violation; but each day or time a violation is continued or repeated after written notice is given to the Owner to cease and desist, it shall be considered a separate violation. Collection of fines may be enforced against an Owner as a specific Assessment pursuant to §8(e).

(3) No delay, failure or omission on the part of the Association or any aggrieved Owner in exercising any right, power or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, shall bar or effect its exercise or enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whomsoever against the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation, or breach of the provisions of this Declaration, the Bylaws or the Rules and Regulations, however long continued, or for adopting provisions which may be deemed unenforceable.

(b) Ownership By Entities Other Than Natural Persons.

Where a corporation, partnership, trust, or other legal entity other than a natural person or persons is the Owner of a Unit, the use of the Common Property in the Subdivision shall be limited at any one time to such officer, director, partner, employee, trustee, or beneficiary (and their family members who reside with them) who is in actual residence, and such individual for such time shall have all the responsibilities and privileges of being an Owner for that time in actual residence.

(c) Covenants Running with the Land.

All provisions of this Declaration shall be construed and are covenants running with title to the Units and shall be enforceable equitable servitudes and restrictive covenants and inure to and bind all Owners and their successors, assigns, heirs, executors, and administrators in the Subdivision.

(d) Association Consent.

The Association, by acceptance of its rights and powers hereunder, approves, consents to, and accepts the terms of the foregoing and all of its terms, provisions, conditions, and covenants.

(e) Rule Against Perpetuities.

If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of William H. Rehnquist, Chief Justice of the Supreme Court of the United States.

(f) Effective Date.

The effective date of this Declaration shall be the date of its filing for record in the office of the Clerk of the Superior Court of Fulton County, Georgia.

(g) Rights of Third Parties.

This Declaration shall be recorded for the benefit of the Unit Owners, and their Mortgagees, as herein provided, and by such recording, no owner of real property adjoining the Subdivision or third party shall have any right, title, or interest whatsoever in the Subdivision, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, except as specifically provided herein and subject to the rights of the mortgagees as herein provided, the Unit Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any owner of property adjoining the Restricted Property, or of any other third party.

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(h) Duty of Owners to inform the Association of Current Address.

Each Owner shall have the affirmative duty and obligation to inform the Association in writing of any change of the Owner's current address. All notices hereunder shall be deemed given if sent to the last address of said Owner which is recorded on the books of the Association and for which the Association has not received the Owner's current address or notice of change of ownership from the Owner.

(i) Notice Requirements of Owners Upon Purchase or Sale of Unit.

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

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

(j) Security.

The Association may, but shall not be obligated to, install, maintain or support certain activities or measures within the Restricted Property designed to make the Restricted Property safer. NEITHER THE ASSOCIATION, THE DEVELOPER, NOR ANY SUCCESSOR DEVELOPER SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE PROPERTY. NEITHER THE ASSOCIATION, THE DEVELOPER, NOR ANY SUCCESSOR DEVELOPER SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE FOR FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS AND OCCUPANTS OF ANY UNIT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE THAT THE ASSOCIATION, AND ITS BOARD OF DIRECTORS, DEVELOPER, ANY SUCCESSOR DEVELOPER, DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, RESTRICTED ENTRANCE GATE, ENTRANCE GATE, OR OTHER SECURITY SYSTEM [HEREINAFTER COLLECTIVELY REFERRED TO AS "SECURITY SYSTEMS"] DESIGNATED BY OR INSTALLED ACCORDING TO GUIDELINES ESTABLISHED BY THE DEVELOPER OR BOARD OF DIRECTORS, IF ANY, MAY NOT BE COMPROMISED OR CIRCUMVENTED; NOR THAT ANY SECURITY SYSTEMS, IF ANY, WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE; NOR THAT SUCH SECURITY SYSTEMS, IF ANY, WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH DESIGNED OR INTENDED. ALL OWNERS AND OCCUPANTS OF ANY UNIT, AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER, ACKNOWLEDGE AND UNDERSTAND THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DEVELOPER, OR ANY SUCCESSOR DEVELOPER ARE NOT INSURERS. ALL OWNERS AND OCCUPANTS OF ANY UNIT AND ALL TENANTS, GUESTS, AND INVITEES OF ANY OWNER ASSUME ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO UNITS, AND TO THE CONTENTS OF UNITS AND FURTHER ACKNOWLEDGE THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES, DEVELOPER, OR ANY SUCCESSOR DEVELOPER HAVE MADE NO REPRESENTATIONS

OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, OR ANY TENANT, GUEST, OR INVITEE OF ANY OWNER RELIED UPON ANY REPRESENTATIONS OR WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY SUCH SECURITY SYSTEMS, IF ANY, RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE RESTRICTED PROPERTY.

(k) Condemnation.

In the event of a taking by eminent domain of any portion of the Common Property on which improvements have been constructed, then, unless within sixty (60) days after the taking, Owners holding at least eighty (80%) percent of the total Association vote other than Developer and the Developer (for so long as Developer is entitled to control pursuant to §6 hereof) otherwise agree, the Association shall restore or replace the improvements taken on the remaining land included in the Common Property to the extent lands are available.

(l) Dispute Resolution.

Any Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any director, or any agent of the Association. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date no less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing by the person requesting the hearing.

(m) Indemnification.

In accordance with the Code and to the full extent allowed by Georgia Law, the Association shall indemnify every Person who was or is a party or who 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 serving as a director or officer of the Association, against any and all expenses, including attorneys' fees, imposed upon or reasonably incurred in connection with any action, suit, or proceeding, if such person acted in a manner 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 no reasonable cause to believe his conduct was unlawful. Any indemnification shall be made by the Association only as authorized in a specific case upon a determination that indemnification of the person is proper under the circumstances.

(n) No Discrimination.

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

(o) Implied Rights.

The Association may exercise any right or privilege given to it expressly by this Declaration, the ByLaws, the Articles of Incorporation, and the Rules and Regulations, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it or reasonably necessary to effectuate the right or privilege.

(p) Agreements.

Subject to the prior approval of Developer (for so long as Developer is entitled to control pursuant to §6 hereof), all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Restricted Property or the privilege of possession and enjoyment of any part of the Restricted Property.

IN WITNESS WHEREOF, the Developer has hereunto caused this Declaration to be executed by its duly authorized and acting Manager, and its seal to be affixed hereto, on this the 13. day of JUNE, 1999.

Signed, Sealed and Delivered in the presence of:

Witness

Notary Public

ATLAS PROJECT, LLC

By:

Clifford Price, Manager



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Approved and Accepted:  
Signed, Sealed and Delivered in  
the presence of:

A. Price

Witness

Stephanie L. Friese

Notary Public



Piedmont at Fifth Townhouse Association, Inc.

By: [Signature]

Clifford Price, President

Attest: [Signature]

Lesley Price, Secretary

[Corp. SEAL]

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STATE OF GEORGIA

COUNTY OF FULTON

**MORTGAGEE CONSENT, APPROVAL AND SUBORDINATION**

REGIONS BANK, an Alabama corporation, ("Mortgagee"), being the owner and holder of a Deed to Secure Debt and Security Agreement recorded in Deed Book 24906 at Pages 297, et.seq., Fulton County, Georgia records (the "Security Instrument") approves that certain Declaration of Covenants, Conditions, Restrictions and Easements (the "Declaration") which is to be recorded with this Consent; and

FURTHERMORE, Mortgagee does hereby expressly subordinate the lien of the Security Instrument to the Declaration provided, however, that the lien of the Security Instrument shall not be subordinate to any lien for homeowner assessments, and, in the event of foreclosure, Mortgagee shall not be liable for the payment of any back assessments. Except as set forth herein, the Security Instrument shall otherwise remain in full force and effect and shall not be subordinated to any other lien or encumbrance.

IN WITNESS WHEREOF, the undersigned has executed this Mortgagee Consent, Approval and Subordination this 8th day of June, 1999.

MORTGAGEE: REGIONS BANK, an Alabama Corporation

By: Charlotte M. Woodman (seal)  
**CHARLOTTE M. WOODMAN**  
Title: VICE PRESIDENT  
**ATLANTA REAL ESTATE DIVISION**

Signed, sealed, and delivered this 8th day of June, 1999.

Harriet Colquhoun  
Witness

Mary Lou Gray  
Notary Public

My commission expires: \_\_\_\_\_

[Notary Seal]

