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DECLARATION OF CONDOMINIUM

FOR

THE ORCHARDS OF WINDWARD CONDOMINIUM

ALPHARETTA, GEORGIA

Recording References:

Condominium Plat recorded at Condominium Plat Book 14, Page 2, Fulton County, Georgia records.

Condominium Floor Plans recorded at Condominium Plans No. 25, Fulton County, Georgia records. Pages 28 - 31

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STATE OF GEORGIA

COUNTY OF FULTON

DECLARATION OF CONDOMINIUM

FOR

THE ORCHARDS OF WINDWARD CONDOMINIUM

This Declaration of Condominium for The Orchards of Windward Condominium (hereinafter referred to as the "Declaration") is made on this 7th day of March, 2003 by Atlanta Alpharetta, L.P., a Georgia limited partnership (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant is the sole owner in fee simple of the real property and improvements thereon located in Land Lot 970 of the 2nd District, 2nd Section of Fulton County, Georgia being more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter the "Property"); and

WHEREAS, Declarant desires to submit said Property to the provisions of the Georgia Condominium Act and to the provisions of this Declaration; and

WHEREAS, Declarant desires to reserve the right and option to submit to the provisions of the Act and this Declaration at a later date all or any portion of certain real property located in Fulton County, Georgia, being more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference (hereinafter the "Additional Property").

NOW, THEREFORE, Declarant hereby declares that the Property is hereby submitted and made subject to the condominium form of ownership pursuant to the Georgia Condominium Act, Georgia Laws 1975, No. 463, pp. 609 - 671, Official Code of Georgia Annotated, Section 44-3-70 et. seq. (1982), and is hereby made subject to this Declaration. By virtue of the recording of this Declaration, said Property shall be owned, held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the provisions of the Georgia Condominium Act and this Declaration, and every grantee of any interest in said Property, by acceptance of a deed or other conveyance of such interest, whether or not such deed or other conveyance of such interest shall be signed by such person and whether or not such person shall otherwise consent in writing, shall own and take subject to the provisions of the Georgia Condominium Act and this Declaration and shall be deemed to have assented to the same. Declarant further declares that this Declaration shall apply to, govern, control, and regulate the sale, resale, or other disposition, acquisition, ownership, use, and enjoyment of the Property and the improvements located thereon, and all its provisions shall be and are covenants to run with the Property and shall be binding on the present owner of said Property and all its successors and assigns and all subsequent owners of the Property

and improvements located thereon, together with their grantees, successors, heirs, executors, administrators, devisees, and assigns.

1. STATUTORY PROVISION. This Declaration is made pursuant to the Georgia Condominium Act, Georgia Laws 1975, No. 463, pages 609-671, Official Code of Ga. Ann. §§44-3-70 et seq. (1982), as the same may heretofore or hereafter be supplemented, amended or modified (hereinafter the "Act").

2. NAME AND LOCATION. The name of the Condominium is The Orchards of Windward Condominium. The Condominium is located in Land Lot 970 of the 2nd District, 2nd Section, Fulton County, Georgia, being more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

3. DEFINITIONS. Words used in this Declaration, which are defined in the Act, shall have the same meaning as set forth therein, unless the context shall prohibit or otherwise require or unless such words are otherwise defined by this Declaration. When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have the following meanings, and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of The Orchards of Windward Condominium Association, Inc., as filed with the Georgia Secretary of State, as amended.

(b) "Additional Property" shall mean and refer to the real property described on Exhibit "B" attached hereto and incorporated herein by this reference and to all improvements located thereon.

(c) "Association" shall mean and refer to The Orchards of Windward Condominium Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

(d) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

(e) " Bylaws" shall mean and refer to the Bylaws of the Association as the same now exist or as may hereafter be amended.

(f) "Commencement Date" shall mean the date on which the first Unit in the Condominium is conveyed to an Owner other than Declarant.

(g) "Common Elements" shall mean and refer to all portions of the Condominium other than the Units.

(h) "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 Act, this Declaration or the Bylaws.

(i) "Condominium Instruments" shall mean and refer to this Declaration and the Plats and Plans as hereinafter defined and all supplements and amendments to the foregoing.

(j) "Condominium" or "Condominium Property" shall mean and refer to the Property hereby made subject to this Declaration and to all portions of the Additional Property as may be made subject to this Declaration pursuant to the terms hereof, together with all improvements located thereon and known as The Orchards of Windward Condominium.

(k) "Condominium Unit" or "Unit" or "Condominium Home" shall mean and refer to a portion of the Condominium intended for independent ownership and use, being depicted on the Plats and Plans and having the boundaries described herein. If the context requires, the term "Unit" shall also be deemed to include the undivided interest in the Common Elements appurtenant thereto.

(l) "Declarant" shall mean and refer to Atlanta Alpharetta, L.P., a Georgia limited partnership, or any successor in title thereto who comes to stand in the same relation to the Condominium as such owner.

(m) "Declaration" shall mean and refer to this document as such shall be amended from time to time in accordance with this Declaration and the Act.

(n) "Managing Agent" shall mean the person, company, or other legal entity who undertakes the duties, responsibilities, and obligations of the management of the Association and the Condominium. 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.

(o) "Mortgage" shall mean and refer to a mortgage, deed to secure debt, deed of trust or other instrument conveying a lien upon or security title to a Condominium Unit or any portion of the Property. "First Mortgage" shall mean and refer to a first priority Mortgage.

(p) "Mortgagee" shall mean and refer to the holder of a Mortgage. "First Mortgagee" shall mean and refer to the holder of a First Mortgage.

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

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

(s) "Plans" shall mean and refer to the floor plans for The Orchards of Windward Condominium, prepared by Zachary W. Henderson, AIA, Inc., Georgia Registered Architect, and Bloodgood Sharp Buster, which floor plans depict the dimensions of the Units and are filed for record, together with this Declaration, in the records of Fulton County, Georgia, along with such additional floor plans for Units hereafter submitted to the terms of this Declaration, and any revisions to the foregoing as may be filed for record in the records of Fulton County, Georgia, from time to time.

(t) "Plats" shall mean and refer to that certain Plat for Phase One, The Orchards of Windward Condominium, prepared by Roger L. Owenby of GeoSurvey, Ltd., Registered Land Surveyor, and filed for record, together with this Declaration, in the condominium plat records of Fulton County, Georgia, and shall include any plats or surveys showing the addition of the Additional Property or any portion thereof to the Condominium and any revisions to the foregoing as may be filed for record in the records of Fulton County, Georgia, from time to time.

(u) "Rules and Regulations" shall mean the then current Rules and Regulations of the Association as may be adopted, amended and repealed from time to time by the Board of Directors.

4. PROPERTY SUBMITTED TO DECLARATION. The Condominium is comprised of the Property, including the improvements located thereon. The general area and location of the Units and other improvements on the Property and the dimensions of the Units are shown on the Plats and Plans, recorded together with this Declaration in the records of Fulton County, Georgia. So long as Declarant owns any Condominium Unit, or has the unexpired option to add the Additional Property or any portion thereof to the Condominium, Declarant shall have the right, but not the obligation, to make improvements and changes to all parts of the Common Elements of the Condominium and the Units owned by Declarant, including, without limitation, renovation and installation of and changes to roadways, drainage areas, utility systems and facilities, rearrangement and installation of security and refuse facilities, and work relating to building exteriors; provided, however, Declarant shall have no obligation to construct or complete any improvements on the Additional Property.

5. UNIT INFORMATION.

(a) The Units are depicted on the Plats and Plans for The Orchards of Windward Condominium. The Plats and Plans shall be recorded before the first conveyance of a Unit, and if such Plats and Plans are not recorded as of the date this Declaration is recorded, the Declarant, without any need of a membership vote, may amend the Declaration to include herein by reference, a reference to the recording information for the Plats and Plans recorded in connection herewith. Each Unit in the Condominium consists of a dwelling and its appurtenant percentage of undivided interest in the Common Elements. Each Unit, together with such undivided interest in the Common Elements, shall constitute a separate parcel of real property, which may be owned, held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered in fee simple in the same manner as any other separate parcel of real property, subject, however, to the Act and this Declaration. The undivided interest in the Common Elements appurtenant to each Unit shall not be separated from such Unit and shall be deemed to be transferred, conveyed and encumbered with the Unit even if such interest is not stated or referred to in the document instrument affecting such transfer, conveyance or encumbrance. Each Unit's appurtenant percentage of undivided interest in the Common Elements shall be equal to each other Unit's undivided interest, such undivided interest having as its denominator the total number of Units existing in the Condominium at any time and as its numerator the number one (1). The undivided percentage or fraction of interest in the Common Elements appurtenant to each Unit shall not be altered except as

expressly provided in the Act. Each Unit shall bear the Common Expenses and share the Common Profits equally with each other Unit in the Condominium.

(b) All Unit owners, by virtue of their ownership of a Unit in the Condominium, are automatically mandatory members of The Orchards of Windward Condominium Association, Inc. and are 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 this Declaration and the Bylaws, each Unit 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 to each other Unit. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect a Unit Owner's membership.

6. UNIT BOUNDARIES. The Units are depicted on the Plats and Plans for The Orchards of Windward Condominium recorded or to be recorded in the Office of the Clerk of Superior Court of Fulton County, Georgia, which Plats and Plans are incorporated herein by this reference. Except as otherwise provided in Sections 7 and 8 below, which describe the Common Elements and Limited Common Elements, each Unit includes that part of the structure which lies within the following boundaries:

(a) Upper and Lower Boundaries. The lower horizontal boundary of each Unit shall be the horizontal plane of the uppermost unfinished surface of the sub-floor of such Unit and the upper horizontal boundary of each Unit shall be the horizontal plane of the lowermost surface of the ceiling joists of such Unit. The horizontal boundaries of all Units shall be deemed to include all lath, wallboard, plasterboard, plaster, paneling, paint, tiles, carpeting, finish flooring and any other materials constituting any part of the interior finished surfaces thereof.

(b) Vertical Boundaries. The vertical (parametric) boundaries of each Unit shall be the vertical planes of the interior surfaces of the wood framing of the walls of the Unit, whether such walls are exterior walls or walls separating the Unit from other Units or the Common Elements, and the vertical planes of the exterior surfaces of windows and entry doors, including sliding glass doors. Such vertical Unit boundaries shall include the sheetrock on the Unit side of said walls, with the framing being a part of the Common Elements. The vertical boundaries of all Units shall be deemed to include all exterior doors and door screens, all exterior glass surfaces, including all windows and window screens (including the framing therefor), and all lath, wallboard, plasterboard, plaster, paneling, molding, tiles, wallpaper, paint and any other materials constituting any part of the interior finished surfaces thereof.

(c) General.

(i) The horizontal and vertical boundaries above identified shall be extended to their intersections with each other.

(ii) All fixtures, equipment and appliances located within the boundaries of each Unit shall be deemed to be a part of the Unit. All portions of any chutes, flues, ducts, conduits, wires, pipes, lines or any other apparatus which serve only one Unit shall be deemed a part of that Unit, whether or not the same are located within or outside the designated boundaries of

the Unit, while any portions thereof which serve more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements. Notwithstanding the description of the boundaries of each Unit as set forth herein, or the depiction of such boundaries on the Plats and Plans, all portions of the heating and air conditioning systems serving only a single Unit (including, without limitation, the furnace, compressors, heat pumps, conduits, pipes, wires and ducts) (including any portions thereof located outside the boundaries of the Unit) shall be deemed to be included within the boundaries of the Unit , and shall form a part of the Unit exclusively served by the same.

(iii) Without limiting the generality of the foregoing, or, as appropriate, in addition each Unit shall include: (A) the decorated surfaces, including paint, lacquer, varnish, wall covering, tile and other finishing material applied to floors, ceilings, and interior and perimeter walls, carpeting, if any, and also the floors and ceilings themselves, and the drywall, paneling and other finishing wall material; (B) all windows, skylights, if any, and screens and doors, including storm doors and windows, if any, and the frames, sashes and jams, and the hardware therefor; (C) all fixtures and appliances installed for the exclusive use of that Unit, commencing at the point of disconnection from the structural body of the building and from utility pipes, lines or systems serving the entire building or more than one Unit thereof, including, without limiting the generality hereof, built-in cabinets, dishwashers, garbage disposers, refrigerators, stoves and hoods, television antennas and cables, furnaces, hot water heaters, heat pumps, air conditioning units (even though located outside the bounds of a Unit), and components of the foregoing, if any; (D) all plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts, conduits and apparatus, wherever located, which serve only that Unit; (E) all control knobs, switches, thermostats and electric outlets and connections affixed to or projecting from the walls, floors and ceilings which service either the Unit or the fixtures located therein; (F) all interior walls that are not necessary for support of the structure, and all components thereof and all space encompassed thereby; (G) the portion of fireplaces actually within the interior of a Unit, and fireplace vents or chases; (H) the space in the attached garage; (I) in the case of a Unit with an attached screened in or glassed in veranda, the veranda; and (J) the attic space or storage space above a Unit, to which the Unit has direct and exclusive access; excluding therefrom, however, all of the following items, whether or not located within the bounds of that Unit: (a) any supporting element of the building contained in interior walls; (b) all plumbing, electric, heating, cooling and other utility service lines, pipes, sump pumps and accessories thereto, wires, ducts and conduits which serve any other Unit; and (c) chimneys.

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

(v) Subject to the terms of this Declaration and the Act, and in particular this paragraph, any Unit Owner may make any improvement or alteration within his Unit that does not materially impair the structural integrity of any structure or otherwise materially lessen the support of any portion of the Condominium as determined in the sole discretion of the Board of Directors. To the extent of any change made by any Owner within his Unit, such Owner shall be

strictly liable for any impairment of the structural integrity of any structure, or the lessening of support of any portion of the Condominium and, furthermore, shall be strictly liable for any damages to person, property, or otherwise, occasioned by the conduct of such Owner, or their successors or assigns in interest, making such change. Despite the foregoing, no Unit Owner shall do anything which would change the exterior appearance of his Unit or any other portion of the Condominium, or make any interior change visible from the exterior, except to such extent and subject to such conditions as provided in this Declaration and in the Bylaws of the Association. Despite anything else contained herein to the contrary, or despite any other authorities granted to Owners, no change in any Unit shall materially weaken, damage, destroy, endanger or remove any bearing wall or bearing column, or any other portion of the Common Elements, other than as may be expressly authorized by the terms of the Act.

(vi) Units shall not be subdivided and, unless boundary relocation or the combination of two (2) or more Units is accomplished in strict accordance with the provisions of Act and with the consent of the Board of Directors, boundaries between adjoining Units shall remain as established in accordance with the terms of this Declaration and shall not be relocated.

7. COMMON ELEMENTS. The Common Elements of the Condominium shall consist of all portions of the Condominium not within the boundaries of the Units. Pursuant to Section 16 of the Act (O.C.G.A. Section 44-3-78), each Unit is allocated an undivided percentage interest in the Common Elements equal to each other Unit in the Condominium. The percentage interest appurtenant to a Unit may change in the event any or all of the Additional Property is added to the Condominium as authorized by O.C.G.A. Section 44-3-89 and Section 10 hereof. If all or any portion of the Additional Property is added to the Condominium, then the undivided interest in the Common Elements appertaining to Units created thereon and as existing in the Condominium shall be allocated and reallocated, respectively, in the same manner as the allocation of undivided interests was done for Units previously existing in the Condominium, to-wit, each Unit in the Condominium shall be allocated an undivided interest in the Common Elements equal to each other Unit in the Condominium, the Common Element undivided interest of each Unit always being a fraction having as its numerator the number one (1) and as its denominator the total number of Units which exist in the Condominium. Common Elements shall be deemed to include both general and limited common elements, unless otherwise herein expressed. The percentage of undivided interest of each Owner in the Common Elements is appurtenant to the Unit owned by the Unit Owner. No appurtenance may be separated from the Unit to which it appertains and such appurtenance shall be deemed to be conveyed or encumbered or to otherwise pass with the Unit whether or not expressly mentioned or described in a conveyance or other instrument describing the Unit. The Common Elements shall remain undivided and, unless the Condominium form of ownership hereby established is terminated, or submitted property is withdrawn from the Condominium, as hereinafter provided, no Owner nor any other person shall bring an action for partition or division of the whole or any part thereof except as provided in the Act. Each Owner may use the Common Elements for the purposes for which they are intended, subject to any limitations stated herein, but no such use shall enter or encroach on lawful rights of the other Owners.

8. LIMITED COMMON ELEMENTS. The following shall constitute limited common elements which are assigned to the exclusive use of a single Unit or Units: any entryway, door steps, stairways, the contiguous balcony, patio, or deck accessible only from such Unit and the

walkways, driveways and parking areas immediately in front of the garage serving the Unit, or such items as otherwise shown as an exclusive limited common element on the Plat or the Plans. Except as otherwise provided herein, no other Common Elements shall be assigned as limited common elements. In the event that any of the items described herein serve more than one Unit but less than all Units, such item shall be Limited Common Elements appurtenant to the Units served thereby. Reassignment of Limited Common Elements may be accomplished only pursuant to the Act. Assignment of Common Elements not previously assigned as Limited Common Elements may be accomplished upon the approval of a majority of the Board of Directors in accordance with the procedures set forth in the Act.

9. ADMINISTRATION OF CONDOMINIUM.

(a) General. The Association has been formed as a non-profit membership corporation. The business and affairs of the Association shall be governed by the directors of the Association. The Association, the directors and the officers of the Association shall have all of the duties and powers set forth in the Declaration, the Articles, the Bylaws, the Act, the Georgia Non-Profit Corporation Code and such other duties and powers reasonably implied to carry out the provisions of this Declaration and the purposes of the Association.

(b) Declarant Control. The Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur:

(i) the expiration of five (5) years after the date of the recording of this Declaration;

(ii) unless the Declarant at that time has an unexpired option to add any portion of the Additional Property, the date 120 days after the date as of which Units to which seventy-five (75%) percent of the undivided interests in the Common Elements appertain (assuming all permitted Units allowed on the Additional Property are added to the Condominium) shall have been conveyed by Declarant to Unit Owners other than a person or persons constituting the Declarant;

(iii) unless the Declarant at that time has an unexpired option to add any portion of the Additional Property, the date as of which Units to which four-fifths (4/5) of the undivided interests in the Common Elements appertain shall have been conveyed by Declarant to Unit Owners other than a Person or Persons constituting the Declarant; or

(iv) the surrender by Declarant of the authority to appoint and remove members of the Board of Directors and officers of the Association by an express amendment to this Declaration executed and recorded by Declarant.

Upon the expiration of the period of Declarant's right to appoint and remove members of the Board of Directors and officers of the Association, such right shall automatically pass to the Unit Owners, including Declarant if Declarant then owns one or more Condominium Units, and a special meeting of the Association shall be called. At such special meeting the Unit Owners shall elect a Board of Directors and shall undertake the responsibilities of the Association.

Every grantee of any interest in the Condominium, by acceptance of a deed to or other conveyance of such interest, agrees that Declarant shall have such authority to appoint and remove members of the Board of Directors and officers of the Association and vests in Declarant such authority as provided by this Section.

(c) Powers and Duties of the Association. The Association shall have the right and power

(i) to employ, retain, dismiss and replace agents and employees to exercise and discharge the powers and responsibilities of the Association;

(ii) to make or cause to be made additional improvements on and as a part of the Common Elements;

(iii) to grant or withhold approval of any action by one or more Unit Owners or other persons entitled to occupancy of any Unit if such action would change the exterior appearance of any Unit or any other portion of the Condominium, or elect or provide for the appointment of an architectural control committee to grant or withhold such approval as attorney in fact on behalf of all Unit Owners and their successors in title;

(iv) to grant easements, leases, and licenses through or over the Common Elements, to accept easements, leases, and licenses benefiting the Condominium or any portion thereof, and to acquire or lease property in the name of the Association as nominee for all Unit Owners. Property so acquired by the Association as nominee for the Unit Owners, upon the recordation of the deed thereto or other instrument granting the same, shall automatically and without more, and for all purposes, including, without limitation, taxation, be a part of the Common Elements.

(v) to acquire, lease and own in its own name, property of any nature, real, personal, or mixed, tangible or intangible; to borrow money; and to pledge, mortgage or hypothecate all or any portion of the property of the Association for any lawful purpose within the Association's inherent or expressly granted powers.

(vi) to amend the Condominium 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 mandatory provisions of this Article or of any applicable law without a vote of the Unit Owners.

(vii) to make and enforce reasonable rules and regulations governing the use of the Units and the Common Elements and facilities located thereon, subject to the consent of Declarant while Declarant owns any Unit primarily for the purpose of sale or has the option to expand the Condominium pursuant to Section 10 of this Declaration, which consent may be withheld in Declarant's sole and unfettered discretion. 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 thereto. 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 power to impose and assess fines and suspend temporarily voting rights and the right of use of the Common Elements and to terminate services to the maximum extent permitted by the Act to enforce the provisions of this Declaration, the Bylaws and the Rules and Regulations of the Association. Notwithstanding the foregoing to the contrary, in no event shall the Association impose any fine upon Declarant or suspend the right of Declarant or its duly authorized agents, representatives or employees to use any Common Elements while Declarant has the option to expand the Condominium pursuant to Section 10 of this Declaration or owns one or more Units primarily for the purpose of sale.

(viii) to enter in and upon Unit premises and any Limited Common Elements for emergency repairs, security and safety purposes and to effect other repairs, improvements, replacement or maintenance as necessary. Such right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all policemen, firemen, ambulance and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, provided, in the event of any emergency, such right of entry shall be immediate. This right of entry shall include the right of the Association, at reasonable times, to enter a Unit to cure any condition which may increase the possibility of fire or other damage in the Condominium in the event an Owner fails or refuses to cure the condition upon request by the Board. To facilitate the Association's right of entry in the event of such emergency as provided herein, the Owner of each Unit, if required by the Association, shall deposit under the control of the Association a key or keys to such Unit.

10. EXPANSION OF THE CONDOMINIUM. Declarant, its successors, transferees, or assigns, pursuant to the provisions of the Act and pursuant to the provisions, definitions, and incorporated references of the Act in this Declaration, has reserved and does hereby reserve the option and right, but no obligation, to expand The Orchards of Windward Condominium to include, subject to this Declaration and the Act, all or any portion of the Additional Property, including any improvements thereon. Except as contained herein, there are no limitations upon this option to expand. The option to expand shall be exercisable by adoption and recordation by the Declarant of an amendment to this Declaration; provided, however, in the event any portion of the Additional Property is owned by a party other than the Declarant and such portion is to be submitted to the terms hereof, such amendment shall be executed by Declarant and by all other owners or lessees of the Additional Property or portion thereof being submitted to the terms hereof. Further, Declarant reserves the right, in its sole discretion, not to exercise the option to expand The Orchards of Windward Condominium, nor commit the Additional Property, or any portion thereof, to this Declaration and the Act. Prior to being added to the Condominium, if so added, no portion of the Additional Property shall be subject to this Declaration. If, and when, any portion of the Additional Property is added to the Condominium, only such portion added shall be subject to this Declaration.

(a) The consent of Unit Owners within the Condominium shall not be required, and the Declarant may proceed with expansion at its sole option and in its sole discretion.

(b) The Additional Property may be added as a whole at one time or in one or more portions at different times, or it may never be added, and there are no limitations upon the

order of addition or boundaries thereof. The exercise of the option as to any portion of the Additional Property shall not bar the further exercise of the option as to any other portions of the Additional Property.

(c) If all of the Additional Property is added to the Condominium, a maximum number of 84 Units may be added to the Condominium, so that the total number of Units does not exceed 96. The maximum average number of Units per acre that may be created on any portion of the Additional Property added to the Condominium is 5.0 Units (although if all of the Additional Property and the maximum number of Units are added, the overall density of the Condominium shall not exceed 5.0 Units per acre).

(d) This option to expand shall expire seven (7) years from the date of recording this Declaration, unless all of the Additional Property shall have been added to the Condominium before that time. Declarant may terminate such option as to all or any portion of the Additional Property at any time prior to the expiration of such seven (7) year period by executing and filing an instrument in the Fulton County, Georgia records evidencing such termination. No other circumstances will terminate such option. Neither the Declarant nor the owner of the Additional Property is obligated to add the Additional Property or any portion thereof. Upon the expiration of said seven (7) year period, to the extent not exercised or previously terminated by Declarant by express amendment to this Declaration, such option shall expire and terminate; provided, however, that Declarant may extend said period for the exercise of the option if Unit Owners of Units to which two-thirds (2/3) of the votes in the Association appertain, exclusive of any vote of the Declarant, consent to the extension of this option within one (1) year prior to the date upon which the option would otherwise have expired.

(e) The Units on the Additional Property will have undivided interests in the Common Elements of the Condominium and liability for Common Expenses in proportions as allocated by use of the method contained in Section 7 and Section 12, respectively, hereof. Each Unit on the Additional Property, when made part of the Condominium, will have a vote in the Association such that each Owner shall be entitled to one (1) vote for each Unit owned.

(f) The Additional Property, when and if added to the Condominium, shall be subject to the restrictions contained in this Declaration or as subsequently promulgated in accordance herewith. Units shall be restricted exclusively to residential use.

(g) Any structures or improvements placed, constructed, replaced, or reconstructed on the Additional Property and added to the Condominium will be compatible with the existing improvements in the Condominium as to principal materials, architectural style, and quality of construction. No assurances are made, however, that any units or other structures which may be developed on the Additional Property will be substantially identical to the Units located on the Property.

(h) No assurances are made with regard to the nature, kind, or location of improvements that may be made on the Additional Property beyond those stated herein and, there are no limitations as to the location of any improvements that may be made on any portion of the Additional Property. All Units constructed on the Additional Property added to the Condominium shall be restricted exclusively to single-family residential use in accordance with the terms of this

Declaration, subject to Declarant's right to use any Unit owned by it in connection with the development and construction of or for sales and promotional activities relating to the Condominium.

(i) No limitation is placed on Declarant's right to create Limited Common Elements within any portion of the Additional Property to be submitted, nor are there any limitations on the right to designate Common Elements therein which may be subsequently assigned as Limited Common Elements.

(j) The option reserved herein shall be exercisable by the Declarant, its successors and assigns, who shall have the unilateral right to reallocate percentages of undivided interests in the Common Elements, liability for payment of Common Expenses, and allocation of votes in the Association, all to be done in accordance with the limitations above described. The Declarant shall exercise this option by its adoption, execution, and recordation of an amendment to the Declaration, and by recording such plats, certificates, and plans as required by the Act. Such amendment shall be adoptable by the Declarant pursuant to the terms hereof without approval by the membership. From time to time, as the Declarant shall file permitted amendments to this Declaration adding portions of the Additional Property to the Condominium as Units and additional Common Elements and facilities, each then Owner and each person or entity thereafter becoming an Owner and their successors-in-title shall, upon the addition of such additional Common Elements and facilities automatically be vested with his or her appropriate undivided percentage interest (computed in accordance with Section 7 hereof) in such additional Common Elements and facilities.

11. MAINTENANCE AND REPAIR.

(a) By the Association.

(i) Except as may be herein otherwise specifically provided, the responsibility of the Association with respect to maintenance, repair and replacement shall be to maintain, repair and replace (subject to available insurance proceeds) all portions of the Common Elements, including the Limited Common Elements. The responsibility of the Association for the maintenance, repair, and replacement of Limited Common Elements shall be limited to the maintenance, repair and replacement of such items as originally constructed and not for the cleaning and housekeeping of said items. Under no circumstances shall the Association be responsible for the maintenance, repair, and replacement of any improvements or betterments to the foregoing items made by the Unit Owner or of any personal property within a Unit except to repair any damage to such improvements or betterments or personal property caused by the Association in performing its responsibilities hereunder.

(ii) Except as may be otherwise provided by the Act, the Association shall not be liable for injury or damage to person or property caused by the elements or by any Unit Owner, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance or equipment the responsibility for the maintenance of which is that of the Association, nor shall the Association be liable to any Unit Owner for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take

some action or perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

(b) By the Unit Owner. The responsibility of the Unit Owner with respect to maintenance and repair shall be to maintain, repair and replace all portions of his Unit and to maintain in a neat, clean and sanitary condition any Limited Common Element appurtenant to his Unit. The responsibility of the Unit Owner shall include the maintenance, repair and replacement of all exterior doors and door screens, all exterior windows and window screens and all fixtures, equipment and appliances, including without limitation portions of the heating and air conditioning systems, and all chutes, flues, ducts, conduits, wires, pipes, lines or other apparatus located within the boundaries of such Owner's Unit or deemed to be a part thereof as provided by Section 6 hereof. Each Unit Owner shall be responsible for performing his responsibilities in such manner so as not to unreasonably disturb other persons in other Units. Each Unit Owner shall promptly report to the Association or its agent any defect or need for repairs, the responsibility for the remedying of which is that of the Association. The Association shall have the right but not the obligation to make any repair or replacement which is the responsibility of the Unit Owner but which responsibility the Unit Owner fails or refuses to discharge, and in such event the Unit Owner shall be obligated to pay for the cost incurred by the Association for such work and such cost shall be added to and become part of the assessment or portion thereof next coming due to which the Unit Owner is subject. Each Unit Owner shall also be obligated to pay for the cost of repairing, replacing, or cleaning any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of such Unit Owner, his family, tenants, employees, invitees, or guests, and such cost shall be added to and become part of the assessment or portion thereof next coming due to which the Unit Owner is subject.

(c) Additional Maintenance Responsibility. Notwithstanding any other provision herein to the contrary, the Board of Directors, upon resolution, shall have the authority to require any or all of the Unit Owners to do any act or perform any work, or otherwise refrain from performing any act or any work, involving portions of the Condominium which are the maintenance responsibility of the Unit Owner which will, in the Board's sole discretion, decrease the possibility of fire or other casualty to the Condominium, reduce the insurance premium payable by the Association or otherwise assist the Association in securing and maintaining such insurance coverage. The Board's authority hereunder shall also allow the Board to require Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes to include, by way of example and not limitation, the requirement of heating Units to certain temperatures and/or of draining water pipes in the event of a vacancy of a Unit and, otherwise, requiring Unit Owners to install smoke detectors and take such other measures as the Board may reasonably require. In the event that a Unit Owner does not comply with any requirement made by the Board of Directors pursuant to this Section, the Association may perform such work at the Unit Owner's cost and expense, which cost and expense shall be added to and become an assessment and lien against the Unit collectible as provided for other assessments. The Association shall have all rights necessary to implement the requirements of this Section, including, but not limited to, the right to adopt reasonable Rules and Regulations and the right of reasonable entry.

12. ASSESSMENTS AND ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

(a) Creation of Lien and Personal Obligation. All sums lawfully assessed by the Association against any Unit Owner or Unit pursuant to the Act or this Declaration, whether for assessments, fines or other charges, shall from the time the same becomes due and payable, be the personal obligation of the Unit Owner and a continuing lien in favor of the Association on the Condominium Unit. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claims of lien for such assessments, fines or other charges shall be required. Each Owner of any Unit, by acceptance of a deed, whether or not it be expressed in such deed, is deemed to covenant and agree to pay to the Association such assessments, fines and other charges. No Unit Owner may waive or otherwise escape liability for such assessments by non-use of the Common Elements or abandonment of his Unit. Nothing contained herein shall authorize a reduction or elimination of any portion of an assessment against a Unit because such Unit allegedly does not benefit from some of the expenses relating to the Common Elements. Each Unit Owner shall be liable for each assessment coming due while he is the Owner of the Unit and any subsequent Owner of a Unit shall be jointly and severally liable for any assessment or portion thereof as may be due and payable at the time of conveyance to the subsequent Owner, provided that the rights of any subsequent Owner to recover from the prior Owner any amounts due by the prior Owner and paid by the subsequent Owner shall not be prejudiced thereby. Notwithstanding the foregoing, 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 of any such Mortgage or by deed in lieu thereof, such holder or other person and his or its successors, successors-in-title and assigns, shall not be liable for, nor shall such Condominium Unit be subject to a lien for, any assessment or charge hereunder chargeable to such Condominium 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. The amount of all Common Expenses not specially or specifically assessed pursuant to the provisions of this Declaration, less the amount of all undistributed and unreserved common profits, shall, pursuant to O.C.G.A. § 44-3-80, be allocated equally among and between all Units existing in the Condominium. In the event of expansion of the Condominium pursuant to Section 10 hereof, such Common Expenses for all Units and Unit Owners shall continue to be allocated such that each Unit shall pay an amount equal to each other Unit for Common Expenses. The annual assessment applicable to each Unit shall be as set forth in the budget for the Condominium 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, except for the first year after the relinquishment of control of the Association by the Declarant pursuant to Section 9 hereof, 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. The assessments provided for herein shall be established on a calendar year basis except as hereinafter may be provided. 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. No delay, failure or omission on the part of the Association or any aggrieved Unit Owner or Owner in exercising any right, power or remedy provided in this Declaration or the Bylaws or as required by law or equity shall be deemed to be an abatement of any assessment or relieve any Unit Owner from paying any assessment when due.

Common Expenses shall be used exclusively to promote the recreation, health, safety and welfare of the residents and Unit Owners of the Condominium and for the improvement, upkeep and maintenance of the Condominium as provided for herein. Common Expenses may include, but shall not be necessarily be limited to, the following:

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

(ii) utility charges for any utilities serving the Common Elements and charges for other common services;

(iii) the cost of any master or blanket policies of insurance purchased for the benefit of all Unit Owners and the Association as required by this Declaration, including fire and other 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;

(iv) the expense of maintenance, operation and repair of the Common Elements as well as any maintenance upon the Units which is the responsibility of the Association hereunder;

(v) charges for any trash collection and utilities provided to the Units and not separately metered;

(vi) 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 assessed against such Unit; and

Common Elements that must be replaced on a periodic basis and of a reserve 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.

(c) Special Assessments for Capital Improvements. In addition to the annual assessment authorized above, and in addition to any special 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 Elements (including the necessary fixtures and personal property attached thereto). Notwithstanding the foregoing, except as provided in Sections 12(d), 12(e) and 16(b) hereof, 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 proportions set forth in Section 12(b) of this Declaration, and the due dates of any such special assessments shall be specified by the Board of Directors. For so long as the Declarant owns one or more Condominium Units for purposes of sale, no special assessment shall be levied against the Unit Owners pursuant to the provisions of this section unless such special assessment is approved by Declarant.

(d) Specific Assessments. Any Common Expenses occasioned by the conduct of any Unit Owner or any family member, tenant, guest, licensee, or invitee of any Unit Owner shall be specifically assessed against such Owner's Unit or Units. Any other Common Expenses of the Association benefiting less than all of the Units or significantly disproportionately benefiting all of the Units shall be assessed equitably among the Units so benefited; provided, however, that nothing in this section shall permit the Association to specifically or disproportionately allocate Common Expenses for periodic maintenance, repair and replacement of any portion of the Common Elements or the Units which the Association has the obligation to maintain, repair or replace. Any expense relating to an optional service provided by or through the Association may be specifically assessed against those Units utilizing such service. The specific assessments provided for in this section shall be levied by the Board of Directors, and the amounts and due dates of such specific assessments so levied shall be as specified by the Board.

(e) Working Capital Fund. Each time a Unit is sold, or title is otherwise transferred to a third party (other than to the Owner's spouse), the Association may charge a one-time initiation fee in an amount to be set by the Board not to exceed the amount of twice the regular monthly assessment. This fee shall be charged to any purchaser or transferee of a Unit, is in addition to the regular monthly assessment, and shall not be considered an advance upon the payment of the regular monthly assessment. A delinquent initiation fee may be collected in the same manner as other assessments, including the filing of a lien."

(f) Non-Payment of Assessments; Remedies of Association. In the event an Owner or Owners 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 the Act shall be the personal obligation of the Owner and 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 personal obligation of the Unit Owner and lien for assessments shall also include interest at a rate of ten percent (10%) per annum (or such higher amount as may be permitted by the Act from time to time) on any assessment, installment, delinquency or late charge from the date such sum was first due and payable. The personal obligation of the Unit Owner and lien for assessments shall further include costs of collection, including court costs, the expenses of sale, any expenses required for the retention or preservation of the Unit, and reasonable attorneys' fees actually incurred. The personal obligation of the Unit Owner and lien for assessments shall also include the fair rental value of the Unit from the time of the institution of suit until the sale of the Unit at foreclosure or until the judgment rendered in such suit is otherwise satisfied. 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 foreclosure 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 Condominium 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. The lien for such assessments may be foreclosed by the Association by an action, suit, judgment and foreclosure in the same manner as other liens for the improvement of real property. The Board of Directors, acting on behalf of the Association, shall have the power to bid on the Condominium Unit in any foreclosure sale and to acquire, hold, lease, encumber, and convey the same. The lien for assessments shall lapse and be of no further effect as to assessments or installments thereof, together with late charges and interest applicable thereto, first becoming due and payable more than three (3) years prior to the date upon which the notice contemplated herein is given or more than three (3) years prior to the institution of suit therefor, if suit is not instituted within ninety (90) days after the giving of such notice. Nothing in this subsection (f) shall be construed to prohibit actions pursuant to O.C.G.A. §44-3-76 to recover sums for which this Section 12 creates a lien.

(g) Priority of Lien. The lien created by this Section shall be prior and superior to all other liens except only (i) liens for ad valorem taxes on the Unit; (ii) the lien of any First Mortgage on the Unit; (iii) the lien of any Mortgage recorded prior to the recording of this Declaration; and (iv) the lien of any secondary purchase money Mortgage covering the Unit, provided that neither the grantee nor any successor grantee on the Mortgage is the seller of the Unit.

(h) Statement from Association. Any Unit Owner, Mortgagee of a Unit, or person having executed a contract for the purchase of a Condominium Unit, or lender considering the loan of funds to be secured by a Condominium 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 Condominium Unit. Such request and response of the Association shall meet the requirements of Section 41 of the Act (O.C.G.A. § 44-3-109). A fee in the amount of ten ($10.00) dollars or such higher fee as may be authorized by the Act shall be payable by the party requesting such statement, prior to the issuance of such a statement.

(i) Payment of Assessments by Declarant. 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 Declarant. Notwithstanding anything contained herein to the contrary, prior to the Commencement Date, Declarant shall have the right, in lieu of paying money assessments to the Association, to satisfy the Common Expenses 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, Declarant shall pay assessments to the Association in respect to each Unit owned by Declarant on the same basis as Owners other than Declarant.

13. EASEMENTS. The following easements are hereby reserved and established.

(a) Use and Enjoyment. Every Owner, his family, tenants and guests, shall have a right and easement of use and enjoyment in and to the Common Elements for the purposes for which they are intended, and such easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following provisions:

(i) The right of the Association to impose reasonable limitations on the number of guests of Owners;

(ii) No such use shall enter or encroach upon the lawful rights of other persons;

(iii) The right of the Association to control and restrict the use and enjoyment thereof as provided herein which shall include but not be limited to the right of the Association to limit the use and enjoyment thereof by the Unit Owners and their respective families, tenants and guests, as well as to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by a Unit Owner, his family, tenants or guests;

(iv) The right of the Association to govern the operation of the Common Elements by promulgating reasonable Rules and Regulations with respect thereto as set forth herein, including, but not limited to, the right of the Association to charge reasonable admission and other fees for the use of any of the facilities situated upon the Common Elements (which charges and fees, unless paid separately, shall be added to and become a part of the Assessment or portion thereof next coming due to which the Unit Owner is subject).

(v) The right of the Association to borrow money for the purpose of improving the Common Elements and, in aid thereof, to mortgage said property, whereupon the rights of any such mortgagee in said property shall be subordinate to the rights of the Owners hereunder;

(vi) The right of the Association to suspend the voting rights of an Owner for any period during which any assessment or other charge against his Unit remains unpaid or for infraction of any provision of this Declaration, the Bylaws or Rules and Regulations of the Association.

(vii) The right of the Association to suspend an Owner's right to use the Common Elements for any period during which any assessment or other charge against his Unit remains unpaid or for infraction of any provision of this Declaration, the Bylaws, or the Rules and Regulations of the Association.

(viii) The right of the Association to grant easements, permits and licenses as provided for herein.

(b) Structural Support. Every portion of a Unit or the Common Elements which contributes to the structural support of another Unit or the Common Elements shall be burdened with an easement of structural support. No Unit Owner shall be permitted to demolish his Unit except to the extent that such demolition may be required to repair or rebuild the Unit when the same has been partially or totally destroyed.

(c) Encroachments. If any chimney, flue, exhaust or other ventilating structure, wire, pipe, duct, conduit or other apparatus servicing any Unit passes through or encroaches upon any other Unit, a valid easement for the encroachment and for the maintenance, replacement and repair thereof shall exist. If any portion of the Common Elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the Common Elements, as a result of the construction, reconstruction, repair, renovation, restoration, shifting, settlement or movement of any portion of the Condominium, a valid easement for the encroachment and for the maintenance, repair and replacement thereof shall exist so long as the encroachment exists. In the event that any building, any Unit, any adjoining Unit, or any adjoining portion of the Common Elements shall be partially or totally damaged or destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then repaired or reconstructed, encroachments of portions of the Common Elements upon any Unit, or of any Unit upon any other Unit or upon any portion of the Common Elements, due to such repair or reconstruction, shall be permitted, and valid easements for such encroachments and the maintenance, repair and replacement thereof shall exist.

(d) Association Easements.

(i) There shall be an easement in favor of the Association through the Units, Common Elements, and Limited Common Elements for the installation, maintenance, repair, and replacement of Units, Common Elements, and Limited Common Elements. Use of this easement shall only be during normal business hours, except that access may be had at any time in the case of emergency.

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

(iii) The Association, through its Board of Directors, shall have the right, privilege, power, and authority to grant permits, licenses, easements and restrictions upon, over, across, above, and under the Common Elements for utilities, drainage, access, roads, slopes and other purposes reasonably necessary or useful for the proper maintenance, ongoing development or operation of the Condominium. In addition, there shall be a general easement in favor of the Association, in, on, over, under and across all portions of the Condominium, and expressly including the Units, for installing, replacing, repairing, and maintaining all utilities, including, but not limited to, gas, water, sanitary sewer, storm sewer, telephone, and electricity, or other community services if and when installed, such as, but not limited to, a master television antenna, cable television system, or security system should the Association determine to have such a system or systems installed. By virtue of this utility easement, the Association shall be expressly permitted to erect and maintain the necessary service and necessary equipment on the Common Elements of the Condominium, and to affix and maintain wires, conduits, cables, and the like on, above, over, across, under and through the roofs and exterior walls of the improvements in the Condominium, including the Units. Should any person furnishing any such utility service request a specific easement by separate recordable documents, the Association shall have the right to grant such an easement. There shall be a non-exclusive easement for all police, firemen, ambulance operators, mailmen, deliverymen, garbagemen, and all similar persons, and to the local governmental authorities and the Association, but not the public in general, to enter upon the Common Elements in the performance of their duties, subject to reasonable rules and regulations as may be established by the Board from time to time.

(e) Utility Easement. To the extent that any utility line, pipe, wire, or conduit serving any Unit or Units shall be wholly or partially within the boundaries of another Unit, such other Unit shall be burdened with and there hereby is reserved and created an easement for the use, maintenance, repair, and replacement of such utility line, pipe, wire, or conduit, such easement to run to the benefit of the Unit or Units served by the same.

(f) Declarant Easements. Declarant and its duly authorized agents, representatives, and employees shall have an easement for the maintenance of signs, trailers, a sales office, a business office, and model units within the Condominium, together with such other facilities and activities as in the opinion of Declarant may be reasonably required, convenient or incidental to the construction, storage of materials, completion, renovation, improvement, development or sale of the Condominium Units or the Additional Property. Declarant shall have a transferable easement on and over the Common Elements for the purpose of making contemplated improvements on the Property or the Additional Property, and for the purposes of doing all things reasonably necessary and proper in connection therewith. The easements conferred by this section may not be terminated and shall continue so long as Declarant owns any Unit primarily for the purpose of sale or has an unexpired option to add the Additional Property or any portion thereof to the Condominium. Notwithstanding anything to the contrary contained in this Section 13 or this

Declaration to the contrary, until twelve (12) months after the latter of (1) the date Declarant no longer has the option to expand the Condominium pursuant to Section 10 of this Declaration or (2) the date Declarant no longer owns any Unit primarily for the purpose of sale, Declarant shall have an easement over all portions of the Common Elements such that Declarant may use one or more of the Units owned or leased by Declarant and the Clubhouse for purposes of maintaining a sales or business office or for purposes of maintaining model Units in order to conduct sales and rental activities for any property owned or being developed by Declarant, or an affiliate entity of the Declarant, and for storage and maintenance purposes.

(g) Easements Regarding Additional Property. The Declarant, on behalf of itself and its transferees as selected by Declarant (such transferees expressly being authorized to exist simultaneously while Declarant retains these rights) and its successors and assigns in interest to the Additional Property, hereby reserves for the benefit of and as an appurtenance to such Additional Property, the following easements and rights, to be used and enjoyed by Declarant and its successors and assigns in interest to the Additional Property and their respective agents, invitees and licensees:

(i) a perpetual, alienable and transferable right and non-exclusive easement for pedestrian and vehicular ingress, egress, access, use and enjoyment on, over and across all of the roads, streets, driveways, and sidewalks, as well as the swimming pool, clubhouse and other recreational facilities now or hereafter located on the Property. Said easement shall expressly include the right of ingress and egress, including vehicular and pedestrian travel, between the Additional Property and any public right-of-ways adjacent to the Condominium Property, with said easement to expressly include the right to pass through any security gates, or other entry and/or security facilities serving the Condominium Property on the same basis as residents of the Condominium Property. The foregoing easement shall, from and after the Commencement Date, be subject to all Rules and Regulations governing the use of such areas and facilities and shall further be subject to payment to the Association by the owner(s) of such Additional Property of its pro rata share of the cost of maintenance, repair and replacement of such areas and facilities, as reasonably reflected in the annual budget of the Association. Such pro rata share shall be equal to a fraction, the numerator of which shall be the total number of living units existing within the Additional Property and the denominator of which shall be the total number of living units existing within the Additional Property plus the total number of Units existing within the Condominium.

(ii) a perpetual, alienable and transferable right and easement for the connection to and the construction, installation, maintenance, repair, replacement, use and enjoyment of all security and utility systems and utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers, electrical, gas, telephone, water, sewer and master television antenna and/or cable system lines now or hereafter located in, on, under or through the Property, as the Declarant and its successors and assigns in interest to the Additional Property and their respective agents, invitees and licensees shall deem, in its or their sole discretion, to be reasonably desirable or beneficial for such purposes except as located within Unit boundaries, for the provision of such services to the Additional Property or any portion thereof; provided, however, that any person who shall construct or install any system or facility pursuant to the easement created by this section shall do so with as little inconvenience as is reasonably possible to the residents of the Condominium Property, and shall repair and restore the property in which such system or facility is constructed or installed as quickly as is reasonably possible at his sole expense.

Such right and easement shall include the right and power in the grantee to grant and accept easements and rights to or from any public or private utility company or any other supplier or servicer.

(iii) a perpetual, alienable and transferable right and non-exclusive easement on, over and across all portions of the Common Elements on the Condominium Property for the paving of such portions of the Common Elements as are necessary in order to connect those portions of said Common Elements which are paved with such roads, roadways, streets and drives as may be constructed in the future on the Additional Property.

(iv) a perpetual, alienable and transferable right and easement for drainage and discharge of surface water from the Additional Property onto and across the Property, excepting Units thereon, provided that such drainage and discharge shall not materially damage or effect the Property or any improvements from time to time located thereon.

(v) a perpetual, alienable and transferable right and non-exclusive easement for the temporary possession and use of such portions of the Common Elements as the Declarant, and its successors and assigns-in-interest to the Additional Property, or any one or more of them, in the exercise of Declarant's or their sole discretion, may deem reasonable, necessary or advisable for, or as may be reasonably required, convenient or incidental to, for the development, construction, installation, and maintenance of improvements on any portion of the Additional Property.

(vi) such additional easements in respect to the Property as are reasonably necessary for the use and development of the Additional Property or any portion thereof.

The easements and rights contained in this subparagraph (g) shall constitute a servitude upon the Property for the benefit of the Additional Property and shall be an appurtenance to the Additional Property, shall run with such properties and shall be binding upon all present and future owners of such properties.

14. ARCHITECTURAL CONTROLS AND USE RESTRICTIONS. To promote harmony among the Unit Owners and thereby protect the value of the Units, all portions of the Condominium 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.

(a) Architectural Controls. To preserve the architectural appearance of the Condominium, no construction of any nature whatsoever shall be commenced or maintained by any Owner other than Declarant which would change the exterior appearance of any Unit or any other portion of the Condominium, nor shall any exterior addition, change or alteration thereto be made, unless and until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors or by an architectural committee appointed by the Board of Directors. Any application to the Board of Directors or an appointed architectural committee shall be in writing and shall provide such information as the Board of Directors may reasonably require. The Board of Directors, or its designated architectural committee, shall have the right to adopt reasonable architectural standards

with respect to construction, additions, or alterations as to any portion of the Condominium and the same shall be enforceable as if set forth herein. In the event that the Board of Directors, or such designated committee, fails to approve or to disapprove such application within ninety (90) days after it has been submitted, the application shall be deemed approved and this Section 14 shall be deemed complied with; provided that even if the requirements of this Section are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of this Declaration or the Bylaws or any building code or zoning ordinance or any other applicable law, ordinance or regulation. As a condition of approval for requested architectural change, modification, addition, or alteration of the grounds or landscape affected to facilitate an architectural change, modification, addition, or alteration, an Owner, on behalf of himself and his successors in interest, shall assume all responsibility for maintenance, repair, and replacement and insurance to or on such change, modification, addition, or alteration. In the discretion of the Board of Directors, an Owner may be made to verify such condition of approval by written instrument acknowledged by such Owner on behalf of himself and his successors in interest. The provision of this Section 14(a) shall not apply to the initial construction of any improvement by Declarant or to any exterior changes, alteration, or additions or any construction, erection, placing or posting of any sign, object, light or thing on the exterior of any buildings or on any Common Element by the Declarant. A Unit Owner may make improvements and alterations within his Unit; provided, however, that no Unit Owner shall make any structural alterations in a Unit or remove any portion thereof or make any additions thereto or do anything which might jeopardize or impair the safety, soundness or structural integrity of that Unit or any other Unit without first obtaining the written consent of the Board of Directors and all Unit Owners and Mortgagees of the Units affected, nor shall any Unit Owner impair any easement without first obtaining the written consent of the Association and of the Unit Owner or Owners and their Mortgagees for whose benefit such easement exists.

(b) Residential Use. The Units at The Orchards of Windward Condominium shall be and are 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 Condominium either as a primary or accessory use of either the Unit or any portion of the Condominium; 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 Condominium Property who do not reside in the Condominium; (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 Elements; (iv) the business activity conforms to all zoning requirements for the Condominium 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 discretion of the Board of Directors.

(c) Signs. Except as may be required by legal proceedings or as may be permitted by the Rules and Regulations, no "For Sale" or "For Rent" signs or other signs or advertising posters of any kind shall be maintained or permitted on any portion of the Property without the prior express written permission of the Board of Directors of the Association, subject to such rules and regulations which may be adopted to govern the same. Notwithstanding the above, the Association may permit specific signs to be located on bulletin boards placed on the Common

Elements by the Association. Any such sign must be in compliance with the Rules and Regulations. The Board of Directors shall establish standards for any permitted signs and posters upon the Condominium Property, and there shall be no deviation from such standards without the prior written consent of the Board of Directors. Notwithstanding the foregoing, the provisions of this Section 14(c) shall not apply to any signs maintained on the Condominium Property by Declarant, its agents, representatives, or assigns, during the period that Declarant has any Condominium Unit for sale; or to a "For Sale" or "For Rent" sign posted by a Mortgagee who becomes the Owner of a Condominium Unit as purchaser at a judicial or foreclosure sale conducted with respect to a First Mortgage or secondary purchase money Mortgage or as transferee pursuant to any proceeding in lieu thereof, subject to reasonable Rules and Regulations established by the Board of Directors with respect to such "For Sale" or "For Rent" signs.

(d) Antennas. The installation of antennas, satellite dishes and other similar or related equipment shall be subject to such Rules and Regulations as are lawfully adopted from time to time by the Board of Directors. Such Rules and Regulations shall be enforceable as if fully set forth herein.

(e) Vehicles. Except with special advance authorization by the Board, no vehicles shall be parked on the Common Elements other than in authorized parking areas, 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 Condominium Property. Parking in assigned parking spaces shall be limited to vehicles owned or operated by the Owner of the Unit to which the parking space is assigned. No vehicles shall be parked or stored on blocks or other such devices on the Common Elements or other portions of the Condominium Property visible from the Common Elements. No vehicles shall be parked so as to obstruct the fire lanes or roadways as may exist within the Condominium. No boats, boat trailers, campers, truck campers, mobile homes, motor homes, canoes, motorcycles, motorized bicycles, motorized go-carts, jet skis, trailers (either with or without wheels), tractors, tractor trailers, trucks over $^3/_4$ ton, vehicles used primarily for recreational purposes, vehicles primarily used for commercial purposes, vehicles with commercial writings on their exteriors and other such vehicles and contrivances as may be specified by the Board shall be stored, allowed to remain, or repeatedly parked on the property subject to this Declaration, except in an area, if any, designated by the Board of Directors or except as otherwise permitted by the Board of Directors. The Association is expressly authorized to tow away, without notice, at an offending owner's expense, any vehicle in violation hereof or which is placed or parked in violation of this Declaration or any Rules and Regulations governing parking as may be adopted by the Board of Directors. The provisions of this Section 14(e) shall not apply to Declarant or its duly authorized agents, representatives, contractors, suppliers or employees.

(f) Nuisances. No rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Condominium, except in containers specifically designated for such purpose, nor shall any odors be permitted so as to render any portion of the Condominium unsanitary, unsightly, offensive or detrimental to persons using or occupying other portions of the Condominium. No obnoxious or offensive activity shall be carried on, within or upon the Condominium, 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 Condominium 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. Stereo equipment and similar devices shall be operated so as not to be audible from any other Unit or the Common Elements. The display or shooting of fireworks or firecrackers is expressly forbidden. Any Unit Owner, or his family, servants, agents, invitees or guests, who shall dump or place any trash or debris upon any portion of the 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 Fifty Dollars ($50.00), whichever is greater, and the same shall be added to and become part of that portion of any assessment next coming due to which the Unit Owner is subject.

(g) Pets. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any part of the Condominium Property, except that a reasonable number of dogs, cats, or other generally recognized household pets may be kept by the respective Owners in their respective Units, provided that they are not kept, bred, or maintained for any commercial purpose and do not endanger the health or unreasonably disturb the Owner of any Units or any resident thereof; provided the Board of Directors may, by adoption of Rules and Regulations, prohibit from the Condominium Property and the Units, animals which are determined by the Board to be dangerous to the health, safety or welfare of the Owners, to expressly include but not be limited to the prohibition of keeping a dog of any size, weight, or type. No pet enclosures shall be erected, placed, or permitted to remain on any part of the Common Elements, including, without limitation, any Limited Common Elements assigned to a Unit. The keeping of pets and their ingress, egress, and travel upon the Common Elements shall be subject to such Rules and Regulations as may be issued by the Board of Directors. If any Owner or occupant fails to abide by the Rules and Regulations and/or covenants applicable to pets, the Board of Directors may bar such pet from use or travel upon the Common Elements. The Board of Directors shall have the power and authority to determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal or bird is a generally recognized household pet, whether such animal or bird endangers the health or unreasonably disturbs the Owner of any Unit or any resident thereof, or whether the number of animals or birds in any Unit is unreasonable. Pets shall be under leash when walked or exercised in any portion of the Common Elements other than the Limited Common Elements. Except in a pet walk area, if any, designated by the Board, no pet shall be permitted to leave its droppings on any portion of the Common Elements, and the Owner of such pet shall immediately remove the same. The Board of Directors shall have the right to fine the Owner or Occupant of a Unit for any violations of the foregoing pet restrictions as further provided in Section 21(e) hereof. Any Unit Owner shall be liable to the Association for the cost of clean up or repair of any damage to the Common Elements caused by the pet of such Owner or an occupant of his Unit, and the same shall be added to and become a part of the portion of any assessment next coming due to which such Unit Owner is subject. The Board of Directors may, in its sole discretion, establish an annual pet fee chargeable to those Owners who keep pets within their Units to defray the cost of maintaining a pet walk area, if any, and to otherwise defray the costs of repairing damages to the Common Elements caused by pets on the Property. Any such pet fee shall be collectible as an assessment pursuant to Section 12 hereof.

(h) Prohibited Activities. Obnoxious or offensive activity shall not be carried on in any Unit or in any part of the Common Elements. Each Unit Owner, his family, visitors, invitees, guests, servants and agents, shall refrain from any act or use of his Unit or the Common Elements 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 Elements, 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 devises, which might tend to cause disorderly, unsightly or unkept conditions, shall not be pursued or undertaken on any portion of the Condominium.

(i) Governmental Regulations. All governmental building codes, health regulations, zoning restrictions and the like applicable to the Condominium 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.

(j) Exterior Appearance. No awnings, shades, screens 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 must be designed and manufactured for that purpose and shall be white, off-white or such other color as shall be approved by the Board of Directors. Nothing visible to the exterior may be hung, placed, displayed or maintained in the Limited Common Elements unless approved, in writing, by the Board of Directors. Further, 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 Condominium, nor shall any clothing, rugs or any other item be hung on any railing enclosing any stairway, entrance, walkway, landing or patio.

(k) Sale Period. Notwithstanding any provisions contained in this Declaration or any amendment to this Declaration to the contrary, during the period of sale of the Condominium Units, whether located on the Condominium Property or the Additional Property, it shall be expressly permissible for Declarant, its agents, assigns and representatives, to use any portion of the Common Elements located on the Condominium Property, including the Clubhouse, and the Additional Property, for any purposes and to use the Units owned by Declarant and the Clubhouse as model Units and/or as offices for the sale of the Condominium Units and related activities and for purposes of storage and maintenance.

(l) Temporary Structures, Etc.. No structures of a temporary character, trailer, tent, shack, carport, garage, barn, or other outbuilding, structure or facility shall be used as a residence or sleeping quarters on any portion of the Condominium at any time, either temporarily or permanently; provided, however, that the Declarant shall be permitted to maintain one or more temporary structures on the Property for use in connection with the construction of improvements and/or the marketing and sale of Units on the Property.

(m) Use of Common Elements. The use and enjoyment of the Common Elements and facilities by the Unit Owners, their families, tenants, guests, servants and agents, shall be subject to such reasonable Rules and Regulations as may be made and amended from time to time in accordance with Section 9(b)(vii) hereof. Except for the right of ingress and egress, the

Owners of Units are hereby prohibited and restricted from using any of said Common Elements, except as may be allowed by the Association's Board of Directors or as expressly provided herein. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners in the Development and is necessary for the protection of said Owners.

(n) Lighting. Except for seasonal decorative lights during the holiday season, no lighting shall be installed on the exterior of any Unit without the prior written consent of the Board. All lighting shall be subject to the rules and regulations of the Board of Directors.

(o) Planting and Gardening. Except to the extent reasonably available on Limited Common Elements and subject to the rules and regulations of the Board of Directors, no planting or gardening shall be done or maintained upon the Condominium Property, except such as have been approved by the Board of Directors.

(p) Vacant Units. Should a Unit become vacant, the Owner is responsible for securing the Unit while it is unoccupied, including engaging all locks, and providing security lighting.

(q) Unsightly or Unkept Conditions. It shall be the responsibility of each Owner to prevent any unclean, unhealthy or unsightly or unkept conditions from existing on or within his or her Unit, including any patio, veranda or other Limited Common Element appurtenant thereto. Any items such as outside patio furniture or other articles that can be viewed from the Common Elements shall be maintained in a neat and attractive condition as determined by the Board.

(r) Heating of Dwellings in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to the Property, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" position and at a minimum of fifty-five (55) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) during the months of October, November, December, January, February, March and April whenever the temperature is forecasted to or does reach thirty-two (32) degrees Fahrenheit or below. Owners and occupants of Units shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Unit Owner or occupant shall immediately inform the Board of Directors of this failure of the equipment and of the time needed to repair the equipment. Notwithstanding any provision to the contrary, any Owner or occupant may be fined up to Five Hundred and No/100 Dollars ($500.00) for violation of this requirement by the Board of Directors, in addition to any other remedies of the Association, without a prior warning, demand, or hearing. Any fine imposed pursuant to this paragraph shall be deemed an assessment against the Unit and may be collected in the same manner as provided herein for the collection of assessments.

(s) Single Families. The Units at The Orchards of Windward Condominium shall be and are restricted exclusively to residential use, as provided herein, and occupancy by one (1) family. As used in this section, the term "one (1) family" shall mean one (1) or more persons related by blood, adoption, or marriage. A number of persons, but not exceeding two (2) adults in a

one (1) bedroom unit, three (3) adults in a two (2) bedroom unit, and four (4) adults in a three (3) bedroom unit, and not exceeding one (1) child in a one (1) bedroom unit, two (2) children in a two (2) bedroom unit, and three (3) children in a three (3) bedroom unit, though not all related by blood, adoption or marriage, shall also be deemed to constitute one (1) family. Occupancy of a Unit by any inhabitants other than one (1) family, as defined herein, is expressly prohibited unless otherwise approved by the Board of Directors. As used herein, the words "by blood" shall extend only to children, grandchildren and grandparents, brothers and sisters, nieces and nephews, parents, uncles and aunts, first cousins, stepchildren, stepsisters and stepbrothers, stepgrandchildren and stepparents and no other kinships. "Occupancy," for purposes of this Declaration, shall be defined as staying overnight in a Unit for more than thirty (30) consecutive days in any one (1) year.

(t) Construction in Easements. No structure, planting or other material may be placed or permitted to remain within the easements for the installation and maintenance of utilities and drainage facilities which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow or drainage channels in the easement areas. The utilities facilities within the easement areas will be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

(u) General Restriction. No Unit Owner or occupant shall commit or permit any violation of any insurance policy obtained and maintained by the Association pursuant to the provisions of Section 15 hereof 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 (i) result in termination of such policy, (ii) adversely affect the right of recovery thereunder, (iii) result in reputable insurance companies refusing to provide insurance as required by Section 15 hereof or the Bylaws, or (iv) 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. If the rate of premium payable with respect to policies of insurance obtained and maintained by the Association or with respect to any insurance policy carried independently by any Unit Owner shall be increased or shall otherwise reflect the imposition of a higher rate by reason of anything that is done or kept in a particular Unit, or as a result of the failure of any Unit Owner or occupant to comply with the requirements of insurance policies obtained and maintained by the Association, or as a result of the failure of any such Unit Owner or occupant to comply with any of the terms and provisions of this Declaration, the Bylaws, or Rules and Regulations of the Association, the Owner of that particular Unit shall reimburse the Association and such other Unit Owner respectively for the resulting additional premiums which shall be payable by the Association or such other Unit Owners, as the case may be. The amount of such reimbursement due the Association may, without prejudice to any other remedy to the Association, be enforced by assessing the same to that particular Unit as a Common Expense specifically assessed under Section 12 hereof.

15. INSURANCE.

(a) The Association shall obtain and maintain at all times, as a Common Expense, insurance as required by Section 44-3-107 of the Act and as required herein, including a casualty insurance policy or policies affording coverage for fires and other hazards covered by the standard extended coverage endorsement and such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the Units, including perils normally covered by the standard "all risk" endorsement, for and in an amount

consonant with the full (current) replacement value of all structures within the Condominium, as determined annually by the Board of Directors of the Association; provided, however, that the Association may exclude from such coverage (1) improvements and betterments made by the Unit Owners, and/or (2) structures covered by builders risk insurance, such coverage to be in an amount consonant with the full replacement value thereof, but only during such period of time as the builders risk insurance remains in full force and effect and only on the condition that the Association is named as an additional insured. The Association shall obtain and maintain at all times, as a common expense, a liability insurance policy or policies in amounts not less than Five Hundred Thousand ($500,000.00) Dollars for injury, including death, to a single person; One Million ($1,000,000.00) Dollars for injury or injuries, including death, arising out of a single occurrence; and Fifty Thousand ($50,000.00) Dollars property damage; or, in the alternative, a liability policy affording coverage for bodily injury and property damage with a combined single limit in an amount not less than One Million Fifty Thousand ($1,050,000.00) Dollars. The policy or policies shall cover the Association, the Board of Directors, officers, and all agents and employees of the Association, and all Unit Owners and other persons entitled to occupy any Unit or other portion of the Condominium Property for occurrences commonly insured against arising out of or in connection with the use, ownership, or maintenance of the Common Elements or other portion of the Condominium which the Association has the responsibility to maintain.

(b) All such insurance coverage shall be written in the name of the Association as trustee for itself, each of the Owners, and the Mortgagees of Owners, if any. Such policies shall provide for the issuance of certificates to the Unit Owners and for mortgagee endorsements to the mortgagees of the Units or any of them. Such policies and the endorsements thereon shall be deposited with the Board of Directors of the Association or such other party as determined by the Board of Directors of the Association. It shall be the duty of the Board of Directors at least annually to conduct an insurance review to determine if the policy in force is adequate to meet the needs of the Association and to satisfy the requirements of Section 44-3-107 of the Act. Such responsibility may be performed, and shall be deemed reasonably performed, by the Board requesting the Association's insurance agent to verify that the insurance policies in existence meet the needs of the Association and satisfy the requirements of Section 44-3-107 of the Act. Exclusive authority to adjust losses under policies hereafter enforced on the Condominium shall be vested in the Board of Directors of the Association; provided, however, that no mortgagee may be prohibited from participating in the settlement negotiations, if any, related thereto. Such insurance shall run to the benefit of the Association, the respective Unit Owners, and their respective mortgagees, as their interests may appear. Individual Unit Owners shall be responsible for obtaining insurance coverage for any improvements or betterments made unless such coverage is obtained by the Board of Directors and the Board informs the Unit Owner it has obtained such coverage. In any event, each Owner shall have the right to obtain additional coverage for such improvements, betterments, or personal property at his own expense; provided, however, that no Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board of Directors, on behalf of all of the Owners and their Mortgagees, may realize under any insurance policy which the Board of Directors may have in force on the Property at any particular time. The policies may contain reasonable deductibles, and the amount thereof shall be added to the face amount of the policies in determining whether the insurance equals at least full replacement cost.

(c) The Board of Directors shall utilize every reasonable effort to secure a master policy covering physical damage that will provide the following:

(i) that the insurer waives its rights of subrogation of any claims against the Association, the Board of Directors, and officers of the Association, the managing agent, agents or employees of the Association, the individual Unit Owners, and their respective household members, tenants, agents and guests, and of any defenses based on co-insurance;

(ii) that any "no other insurance" clause contained in the master policy shall expressly exclude individual Unit Owners' policies from its operation;

(iii) a "standard" or "union" mortgage clause (without contribution) in the form customarily used by first mortgage lenders in the area where the Condominium is located;

(iv) that the master policy on the Condominium cannot be cancelled, invalidated, or suspended on account of the conduct of any director, officer, agent, or employee of the Association or the managing agent without a prior demand in writing delivered to the Association and to all Mortgagees of Units to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured;

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

(vi) that the master policy may not be cancelled or substantially modified without at least thirty (30) days' prior notice in writing to the Board of Directors and all mortgagees of Units;

(vii) that all liability insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of the negligent acts of the Association or other Unit Owners;

(viii) that coverage will not be prejudiced by (1) any act or neglect of the Owners of Condominium Units when such act or neglect is not within the control of the Association, or (2) any failure of the Association to comply with any warranty or condition regarding any portion of the premises over which the Association has no control;

(ix) to the extent feasible, that the deductible amount per occurrence shall not exceed One Thousand ($1,000.00) Dollars;

(x) that despite any provisions giving the carrier the right to elect to restore damage in lieu of cash, such option shall not be exercisable without the prior written approval of the Association.

(xi) agreed amount and inflation guard endorsements; and

(xii) construction code endorsements, if there are applicable construction code provisions, that require changes to undamaged portions of buildings even when only part of the Condominium is destroyed by an insured hazard.

(d) All policies of insurance shall be written with a company licensed to do business in the State of Georgia and holding a rating of "A" or better in the Financial Category as established by A.M. Best Company, Inc., if available, or, if not available, the best rating available. The company shall endeavor to provide insurance certificates to each Owner and each mortgagee. The insurance carrier shall, if necessary, qualify under the standards and qualifications established by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

(e) The Association shall not maintain any insurance policy which:

(i) allows contributions or assessments to be made against the Association or any Unit Owner or such Owner's Mortgagees;

(ii) allows loss payments to be contingent upon action by the insurer's board of directors, policy holders or members; or

(iii) includes any limiting clauses (other than insurance conditions) which could prevent any Unit Owner or such Owner's mortgagee from collecting insurance proceeds.

(f) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Unit Owners or their mortgagees. In the event an Owner carries insurance individually upon any portion of his interest in the Condominium, which in the case of loss results in proration of insurance proceeds between the policy carried by the Association and any such policy carried by such Owner, the proceeds available under such Owner's policy shall be payable to the Association as trustee for such Owner for the purposes of reconstruction. Each Unit Owner shall notify the Board of Directors of all structural improvements made by the Unit Owner to his Unit or any other improvements made by such Owner to his Unit, the value of which is in excess of one thousand dollars ($1,000). Any Unit Owner who obtains an individual insurance policy covering any portion of the Condominium, other than improvements and betterments made by such Owner at his or her expense, and personal Property belonging to such Owner, shall file a copy of such individual policy or policies with the Board of Directors within ten (10) days after the purchase of such insurance. Such Owner shall also promptly notify, in writing, the Board of Directors in the event such policy is cancelled.

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

(i) public liability and officers' and directors' liability insurance in such amounts as the Board may determine, but in no event less than that required by §44-3-107 of the Act (such insurance shall contain a cross liability endorsement).

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

(iii) fidelity bonds or insurance covering officers, directors, employees and agents of the Association and other persons who handle or are responsible for handling Association funds or funds administered by the Association. Such fidelity bonds shall name the Association as an obligee, shall be written in an amount to provide protection for the maximum funds, including reserve funds, that the Board reasonably estimates will be in the custody of the Association or its management agent at any time when the bond or insurance is in force and effect, and shall contain waivers of any defense based upon the exclusion of persons serving without compensation. However, in no event may the aggregate amount of such bond be less than a sum equal to three (3) months' aggregate assessments on all Units plus reserve funds. The fidelity bond or insurance described herein shall also provide that it may not be canceled or substantially modified without at least thirty (30) days prior notice in writing to the Board of Directors and all Mortgagees of Units who have requested such notice in writing. In the event the Association delegates some or all of the responsibility for the handling of funds to a management entity, fidelity bonds or insurance shall be required for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association; and

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

(h) Insurance carried by the Association as a Common Expense shall not include any part of a Unit neither depicted on the original plats and plans nor included in the original mortgage, nor shall the Association include public liability insurance for individual Owners for liability arising within the Unit. Nothing contained in this Declaration or the Bylaws shall be construed as giving any Owner or other party a priority over any rights of First Mortgagees as to distribution of insurance proceeds.

(i) It shall be the individual responsibility of each Owner at his own expense to provide as he sees fit, title insurance on his individual Unit, homeowners liability insurance, theft and other insurance covering personal property damage and loss. The Board of Directors may, to the extent permitted by applicable law, require any Unit Owner to carry public liability, personal property, and/or other insurance with respect to the occupancy of such Owner's Unit and to furnish copies of any policies required to be obtained to the Association, if the Board determines that such coverage is reasonably necessary to protect the interests of the Association and/or the other Unit Owners and requires all Unit Owners engaged in similar activities to obtain similar insurance coverage. No Unit Owner shall be entitled to exercise his right to maintain insurance coverage in such a manner as to diminish or affect any recovery or payment which may be realized under any insurance policy carried by the Association.

(j) All insurance policies purchased by and in the name of the Association shall provide that proceeds covering property losses shall be paid to the Association. The Association shall receive such proceeds as are paid and delivered to it and hold the same in trust for the benefit of the Unit Owners and their Mortgagees in accordance with the respective undivided interest of the Unit Owners in and to the Common Elements. Such proceeds, or such portion thereof as may be required for such purpose, shall be disbursed by the Association in payment of repairs or reconstruction as herein provided and as provided in Section 16. Any proceeds remaining after defraying all costs of repairs and reconstruction shall be disbursed to the Unit Owners of the

damaged Units in proportion to the cost of repairing the damage suffered by the Unit of each such Owner as determined by the Association, remittances to Unit Owners and their Mortgagees being payable jointly to them. In the event a determination is made to terminate the Condominium, withdraw from the Condominium the damaged portion of the Property, or not to repair or reconstruct the damage or destruction as provided in Section 16 herein, then the insurance proceeds shall be disbursed by the Association to the beneficial Unit Owners, remittances to the Unit Owners and their Mortgagees being payable jointly to them; provided, however, should the determination be made not to repair or reconstruct the damage as provided herein, then the insurance proceeds shall first be used to restore the damaged portions of the Property as near as practicable to its natural state, the Owners thereof shall quitclaim the same to the Association as trustee for the other Unit Owners, and such parcels shall be maintained by the Association in a neat and attractive condition as a part of the Common Elements.

16. RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE

(a) Damage and Destruction.

(i) Immediately after the damage or destruction by fire or other casualty to all or any part of the Property covered by insurance purchased by the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance with respect to property losses of Unit Owners and obtain reliable and detailed estimates of the cost of repair or reconstruction of such damaged or destroyed property. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary. Each Unit Owner hereby appoints the Association as its attorney-in-fact for the purpose of and with respect to the filing and adjustment of all claims, the collection and appropriate disposition of the proceeds thereof, the negotiation of losses and execution of releases of liability, and the execution of all documents and performance of all acts necessary to carry out the duties as set forth in this Section 16. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Property to substantially the same condition in which it existed prior to the fire or other casualty with each Unit and the Common Elements having the same boundaries as before. Further, any repair or reconstruction shall be in substantial accordance with the Plats and Plans and specifications under which the Condominium was originally constructed.

(ii) Each Unit Owner and each Mortgagee of a Unit, by acceptance of a deed or other conveyance of a Unit, hereby agrees that in the case of damage or destruction to Common Elements not involving any Unit, such damage or destruction shall be repaired or reconstructed unless, within forty-five (45) days of the date of such a casualty, two-thirds (2/3) of the Unit Owners and their First Mortgagees agree in writing not to repair or reconstruct.

(iii) Each Unit Owner and each Mortgagee of a Unit by acceptance of deed or other conveyance of a Unit, hereby agrees that in the case of damage or destruction to one or more Units, such damage or destruction (including any damage or destruction to any Common Elements involving any such damaged Unit) shall be repaired or reconstructed.

(iv) If for any reason the amount of insurance proceeds to be paid as a result of a casualty, or reliable and detailed estimates of the cost of repair or reconstruction of such casualty, are not made available within forty-five (45) days after such a casualty, then the 45-day period specified in Subsection (ii) above shall be extended until such information is made available; provided, however, that such period of time shall in no event exceed sixty (60) days after such a casualty.

(v) If is determined in accordance with the foregoing provisions hereof that any damaged Common Elements shall not be repaired or restored, then the insurance proceeds appertaining thereto shall be divided among the Unit Owners in accordance with the provisions of this Section 16. Provided, however, in all cases where there is a Mortgagee endorsement, any insurance proceeds shall be disbursed to the Unit Owner and such Mortgagee jointly, which shall use such proceeds as they alone may determine. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee.

(vi) All casualty insurance policies purchased by the Association for the benefit of the Unit Owners and their Mortgagees shall provide that proceeds covering property losses of Unit Owners shall be paid to the Association which shall be responsible for holding such funds on behalf of the Unit Owners. The duty of the Association shall be to receive such proceeds as are paid to it and hold the same for the purposes elsewhere stated herein and for the benefit of such Unit Owners and their Mortgagees in the following shares:

(A) Common Elements. Proceeds on account of damage to Common Elements not involving a Unit, an undivided share for each Unit Owner, such share being the same as the undivided share in the Common Elements appurtenant to his Unit.

(B) Units. Proceeds on account of damage to Units (or on account of damage to Common Elements involving a Unit) shall be held for the Owners of the damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Board of Directors of the Association.

(C) Mortgagees. In the event a Mortgagee endorsement has been issued as to any Unit, the share of a Unit Owner shall be held in trust for the Mortgagee and the Unit Owner as their interests may appear. In the event of substantial damage to or destruction of any Unit or any part of the Common Elements, the holder of any First Mortgage on a Unit will, upon written request, be entitled to timely written notice by the Association of any such damage or destruction and no provision of this Declaration or of any other document establishing the Condominium shall entitle the Owner of a Unit or any other party to priority over such holder with respect to the distribution to such Unit Owner of any insurance proceeds for losses to a Unit and/or the Common Elements.

(b) Repair and Reconstruction.

(i) If the damage or destruction for which the insurance proceeds are paid to the Association is to be repaired or reconstructed, such proceeds shall be disbursed by the Association to defray the cost of such repairs or reconstruction as herein provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners thereof, as

determined in accordance with the provisions of Section 16(a)(vi) hereof, remittances to Unit Owners and their Mortgagees having Mortgagee endorsements, being payable jointly to them, who shall use such proceeds as they alone may determine. This is a covenant for the benefit of such Mortgagees and may be enforced by any such Mortgagee.

(ii) If the damage or destruction for which the insurance proceeds are paid to the Association is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall levy a special assessment to provide funds to pay such excess cost of repair or reconstruction, in the following manner:

(A) Any such assessment on account of damage or destruction to any Unit shall be assessed against the Owner of the damaged Unit.

(B) Any such assessment on account of damage or destruction to any Common Elements serving less than all Unit Owners shall be assessed equitably against all Unit Owners served thereby.

(C) Any such assessment on account of damage or destruction to any Common Element serving all Unit Owners shall be assessed against all Unit Owners in the Condominium in proportion to their respective ownership interest shares in the Common Elements.

(iii) It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial Owners of the fund in the manner elsewhere stated; except, however, that the part of a distribution to a beneficial Owner which is less than the assessments paid by such Owner into the construction fund shall not be made payable to any Mortgagee unless such Mortgagee, itself, shall have advanced any portion of any such assessments paid by the Owner, in which event the agreement between the Owner and such Mortgagee shall prevail.

(c) 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 separately maintained by the Association and which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Section.

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

(e) Insurance Deductibles. If maintenance is required as a result of an insured loss, the amount of the deductible shall be considered a maintenance expense to be paid by the

person or persons who would be responsible for such repair in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in accordance with the total cost of repair. As to insurance required to be maintained by the Association under the Act and this Declaration, the amount of deductible which can be allocated to any one Unit Owner shall not exceed One Thousand Dollars ($1,000.00) per casualty loss. The existence of a reasonable deductible in any required insurance policy shall not be deemed a failure to maintain insurance as required by the Act or this Declaration.

17. LEASING OR SALE OF UNITS

(a) Notice Provisions. Any Owner who sells or who leases his Unit shall give notice in writing to the Board of Directors of such sale or of such lease stating the name, address and telephone number of the purchaser or lessee, the term of the lease, and such other information as the Board may reasonably require. The Board of Directors shall have authority to make and to enforce reasonable Rules and Regulations in order to enforce this provision, including the right to impose fines constituting a lien upon the Unit sold or leased, pursuant to Section 44-3-109 of the Act; provided, however, no Rule or Regulation may create a right of first refusal in the Association or any other third party, this paragraph solely creating the obligation of an Owner to give notice of sale or lease. Notice, as required herein, shall be given, in the case of a lease, not later than fifteen (15) days after commencement of the lease and, in the case of a sale, not later than the closing of the sale.

(b) Leasing Provisions. Units may be rented only in their entirety; no fraction or portion may be rented. All leases and lessees are subject to the provisions of this Declaration, the By-laws and the Rules and Regulations of the Association. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, the Bylaws and the Rules and Regulations and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing and shall be in compliance with such Rules and Regulations as may be adopted by the Board of Directors. With the exception of a lender or Mortgagee in possession of a Condominium Unit following a default in a First Mortgage, a foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure, all leases must be for a term of no less than six (6) months unless otherwise agreed to in writing by the Board. The Unit Owner shall make available to the tenant copies of the Declaration, Bylaws, and Rules and Regulations, all of which the tenant, by taking occupancy of a Unit, agrees to be bound by.

(c) Exceptions to Leasing Provisions. Any of the foregoing provisions of this Section 17 notwithstanding, a lease or sublease shall not be subject to the restrictions relating to the term of the lease or the leasing of less than the entire Unit if the lease or sublease is (i) by a joint owner of his or her undivided interest in a Unit to another joint owner of the same Unit, or (ii) by an owner-occupant of a Unit who subleases a portion of the Unit while continuing to personally occupy the remaining portion of the Unit.

(d) Statement From Association. Any Unit Owner or person having executed a contract for the purchase of a Unit requesting a recordable statement certifying to the receipt by the Association of the notice herein specified, or the waiver of the Association's right to receive such

notice shall be furnished such a statement. Any such statement shall be binding on the Association and every Unit Owner. Payment of a fee, not exceeding the maximum amount as may be permitted under the Act, may be required as a prerequisite to the issuance of such a statement.

18. MORTGAGEE RIGHTS.

(a) To the extent permitted by the Act, any holder of a First Mortgage who obtains 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 dues or charges which accrue prior to the acquisition of title to such Unit by the Mortgagee.

(b) 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 timely written notice of:

(i) any proposed amendment of the Condominium Instruments effecting a change in the boundaries of any Unit or the exclusive easement rights appertaining thereto, the interest in the general or limited common elements appertaining to any Unit or the liability for Common Expenses appertaining thereto, the number of votes in the Association appertaining to any Unit, or the purposes to which any Unit or the Common Elements are restricted;

(ii) any proposed termination of the Condominium;

(iii) any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a First Mortgage held, insured or guaranteed, by such Eligible Mortgage Holder;

(iv) any default by an Owner in the performance of his obligations under this Declaration or the Bylaws or Rules and Regulations or any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a First Mortgage held, insured or guaranteed, by such Eligible Mortgage Holder which default or delinquency remains uncured for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a First Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an individual Unit Owner of any obligation under the Condominium Instruments which is not cured within sixty (60) days;

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

(vi) any proposed action which would require the consent of a specified percentage of Mortgage holders.

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

(d) In addition to the rights of Mortgagees elsewhere provided above, each First Mortgagee of a Condominium 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.

(e) Furthermore, each First Mortgagee of a Condominium Unit which is an institutional lender (such institutional lender being defined herein as a bank, savings and loan association, insurance company, FHA 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.

(f) The termination of the Condominium for reasons other than substantial destruction or condemnation of the Property must be agreed to by at least sixty-seven percent (67%) of the Eligible First Mortgagees.

19. ASSOCIATION'S OBLIGATION TO PROVIDE CONDOMINIUM 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 Condominium, 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 Declaration, Bylaws, and Rules and Regulations governing the Condominium, and the most recent annual audited financial statement, if such is prepared. "Available" shall mean, at a minimum, available for inspection upon request during normal business hours or under other reasonable circumstances.

20. PREPARER. This Declaration was prepared by Stephen A. Winter, Esq. of Weinstock & Scavo, P.C., 3405 Piedmont Road, N.E., Suite 300, Atlanta, Georgia 30305.

21. GENERAL PROVISIONS

(a) Amendments.

(i) Except as otherwise provided for herein, this Declaration may be amended by the affirmative vote, written consent, or any combination of the affirmative vote and written consent of the members of the Association holding two-thirds (2/3) of the total votes thereof; provided, however, during such time as there shall exist an unexpired option to add any Additional Property to the Condominium and/or the Declarant has a right to control the Association pursuant to Section 9 hereof, such agreement shall be by the Declarant and the Owners of Units to which two-thirds (2/3) of the votes in the Association appertain, exclusive of any vote or votes appurtenant to any Unit or Units then owned by Declarant.

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

(iii) Notwithstanding anything herein to the contrary, this Declaration may be amended by the Declarant alone to correct a scrivener's error or for the purpose of complying with the requirements of any governmental or quasi-governmental entity authorized to fund, purchase or guarantee security deeds on individual Units, as such requirements may exist from time to time, to comply with the requirements of any applicable governmental (including federal, state, municipality or other governmental authority) law, statute, rule, regulation or ordinance including, without limitation, the Georgia Condominium Act or to comply with the requirements of any title insurance company.

(iv) 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 of consideration and state either the subject matter of the proposed amendment or that a copy of the proposed amendment is attached thereto. Any Member not present at a meeting at which an amendment is considered may evidence their consent to such amendment, thereafter, in writing. No amendment shall be effective until a certified copy is filed in the Fulton County, Georgia records.

(v) Notwithstanding the foregoing, if any conflict shall exist between the terms of this Declaration and any regulation or other requirement of the Federal Home Loan Mortgage Corporation ("FHLMC") or Federal National Mortgage Association ("FNMA") and such regulation or requirement is not the subject of a valid waiver thereof by FHLMC or FNMA, then this Declaration shall be deemed, without the necessity of any further act or documentation, to have been amended so as to be consistent with such more restrictive regulation or requirement. Additionally, notwithstanding any other provision contained herein to the contrary, each Unit Owner, by acceptance of a deed or other conveyance to a Condominium Unit, agrees that, if requested to do so by the Board of Directors, such Unit Owner will consent to the amendment of this Declaration, the Bylaws, the Articles of Incorporation of the Association, or any Condominium Instrument (i) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with, or remove any conflict or inconsistency with, the provisions of any applicable governmental statute, rule, regulation, including without limitation the provisions of the Georgia Condominium Act, or judicial determination which shall be in conflict therewith, (ii) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Condominium Units, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Condominium Unit, or (iv) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Condominium Units.

(vi) 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 Condominium 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 such 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.

(vii) Notwithstanding any other provision contained in the Declaration to the contrary, Eligible Mortgage Holders (being defined as those holders of a First Mortgage on a Unit who have requested in writing that the Association notify them of any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders) shall have the right to join the decision making about certain material amendments to the Condominium Instruments, including this Declaration. Amendments defined under this Section as "material" must be agreed to by Owners who represent at least two-thirds (2/3) of the total allocated votes in the Association. In addition, approval to such material amendments must be obtained by Eligible Mortgage Holders who represent at least fifty-one percent (51%) of the votes of Units that are subject to Mortgages held by Eligible Mortgage Holders. A change to any of the following shall be considered as material for purposes of this paragraph: (i) voting rights; (ii) assessments, assessment liens, or the priority of assessment liens; (iii) reserves for maintenance, repair, and replacement of Common Elements; (iv) responsibility for maintenance and repair; (v) reallocation of interests in the general or limited common elements, or rights to their use; (vi) re-definition of any Unit boundaries; (vii) except as provided in Section 10 hereof, expansion or contraction of the Condominium, or the addition, annexation or withdrawal of property to or from the Condominium; (ix) insurance or fidelity bonds; (x) leasing of Units; (xi) imposition of any right of first refusal or similar restriction on an Owner's right to sell, transfer or otherwise convey his or her Unit; (xii) the decision by the Association to establish self management when professional management had been required previously by the Condominium Instruments or by an Eligible Mortgage Holder; (xiii) restoration and repair of the Condominium (after a hazard damage or partial condemnation) in a manner other than specified in the Condominium Instruments, including this Declaration; (xiv) convertibility of Units into Common Elements or of Common Elements into Units; (xv) any action to terminate the legal status of the Condominium after substantial destruction or condemnation occur; or (xvi) any provisions that expressly benefit mortgage holders, insurers, or guarantors. For purposes of this Section 21, the approval of any proposed amendment to this Declaration by a mortgagee shall be deemed implied and consented to if the mortgagee fails to submit a response to any written proposal for an amendment to this Declaration within thirty (30) days after the mortgagee receives notice of the proposed amendment to this Declaration sent by certified or registered mail, return receipt requested. This paragraph shall not be deemed to eliminate or modify any right of the Declarant provided for in the Condominium Instruments to approve amendments to the Condominium Instruments so long as the Declarant owns any Unit primarily for the purpose of sale.

(viii) The Association, by vote of the Board of Directors pursuant to Sections 44-3-106(c) and 44-3-106(f) of the Act, is hereby empowered to amend the condominium 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 the mandatory provisions of the Act, or any applicable statute (Georgia, Federal or State) or to the terms of this Declaration.

(b) Eminent Domain. In the event that all or part of the Condominium shall be taken by any authority having the power of eminent domain, the allocation of the award of such condemnation and all related matters, such as the reallocation of undivided interests in the Common Elements, liabilities for assessments and votes, shall be handled pursuant to and in accordance with

the then applicable provisions of the Georgia Condominium Act. If there are no such provisions of the Act then in effect, the allocation of the award and related matters shall be handled pursuant to and in accordance with those provisions of the Act relating thereto in effect as of the date hereof. If any Unit or portion thereof or the Common Elements or any portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the holder of any First Mortgage on a Condominium Unit will be entitled to timely written notice of any such proceeding or proposed acquisition, and no provision of this Declaration or of any other document establishing the Condominium will entitle the Owner of a Condominium Unit or other party to priority over such holder with respect to the distribution of the proceeds of any award or settlement relating to such Condominium Unit.

(c) Rights of Third Parties. This Declaration shall be recorded pursuant to the provisions of the Georgia Condominium Act for the benefit of Declarant, the Unit Owners and their Mortgagees as herein provided, and no adjoining property owner or third party shall have any right, title or interest whatsoever in the Condominium or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Declarant and such Mortgagees as herein provided, the Unit Owners shall have the right to cancel, extend, modify, amend or otherwise change the provisions of this Declaration without the consent, permission or approval of any adjoining owner or third party.

(d) Partition, Termination and Withdrawal of Property. The Common Elements shall remain undivided, and unless the condominium form of ownership hereby established is terminated or the Condominium Property is withdrawn from the Condominium, as hereinafter provided, no Unit Owner nor any other person shall bring any action for partition or division of the whole or any part of any Condominium Unit or of the whole or any part of the Common Elements. The Condominium may be terminated or a portion of the Condominium Property may be withdrawn from the Condominium only in strict accordance with and pursuant to the then applicable provisions of the Georgia Condominium Act, and all matters relating to such termination or withdrawal shall be handled in accordance with such provisions of the Act. If there are no such provisions of the Act then in effect, then such termination or withdrawal and related matters shall be handled pursuant to and in accordance with those provisions of the Act relating thereto in effect as of the date hereof.

(e) Enforcement.

(i) Each Owner and occupant of a Unit shall comply strictly with this Declaration, the Bylaws, and Rules and Regulations of the Association, 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 or 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. Inasmuch as the enforcement of the provisions of this Declaration, the Bylaws and Rules and Regulations of the Association is essential for the effectuation of the general plan of the Condominium 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.

(ii) The Association shall have the right to suspend an Owner's voting rights and to suspend an Owner's right to use the Common Elements and to terminate any services provided or paid for by the Association for any period during which any assessments or other charges owed to the Association remain unpaid, and, for any violation of any provision of this Declaration, the Bylaws or the Rules and Regulations of the Association, for the duration of the infraction and for an additional period not to exceed thirty (30) days; provided, however, that no such suspension of use or termination of service shall deny any Unit Owner or occupant access to the Unit owned or occupied, or cause any hazardous or unsanitary condition to exist. Notwithstanding any other provision of this Declaration, those services listed in O.C.G.A. § 44-3-76, including without limitation, water, gas, electricity, heat and air conditioning services, which are being provided to a Unit or Unit Owner by the Association may be terminated by the Association upon the failure by such Unit Owner to pay assessments, fines or other amounts due pursuant to this Declaration and O.C.G.A. § 44-3-109(a), subject to the suspension standards and notice requirements imposed on the institutional providers providing such services to the Condominium and only after a final judgment or final judgments in excess of a total of Seven Hundred Fifty Dollars ($750.00) (or such other amount as may be specified by the Act) are obtained in favor of the Association from a court of competent jurisdiction. Such utility services shall not be required to be restored until the judgment or judgments are paid in full. All Common Expenses incurred as a result of or in connection with the termination or reinstatement of any services pursuant to this provision shall be an assessment and a lien against the Unit collectible as provided in Section 12 hereof.

(iii) In the event of any failure to comply strictly with this Declaration, the Bylaws or the Rules and Regulations of the Association, the Board of Directors may, in addition to exercising the other remedies provided for herein, levy fines against the Owner or occupant for such failure in an amount which the Board, in its sole discretion, determines to be reasonable under the circumstances. Each day or time a violation is continued or repeated after written notice is given to the Owner or occupant to cease and desist shall be considered a separate violation. All fines shall be an assessment and a lien against the Unit collectible as provided in Section 12 hereof.

(iv) 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 Condominium 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; provided, however, that no notice shall be required in cases of emergency. Notwithstanding the foregoing, the Association shall have the right to immediately tow or boot, at the owner's expense, 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 Rules and Regulations promulgated by the Association. Neither the Association, nor its agents, shall be deemed guilty or liable for any manner of trespass for such entry, abatement or removal. All costs and expenses incurred pursuant to this paragraph shall be an assessment and a lien against the Unit collectible as provided in Section 12 hereof.

(v) Should the Association employ legal counsel to enforce this Declaration, the Bylaws or Rules and Regulations of the Association, all costs incurred in such

enforcement, including reasonable attorney's fees actually incurred, shall be paid by the violating Owner and shall be an assessment and a lien against the Unit collectible as provided in Section 12 hereof.

(vi) No delay, failure or omission on the part of the Association or any aggrieved Owner in exercising any right, obligation, power or remedy shall operate as a waiver or bar or otherwise affect its right to exercise or enforce any right, power or remedy provided for herein. 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.

(vii) Each Owner hereby acknowledges and agrees that the Association shall not be entitled to institute any legal action against anyone on behalf of any or all of the Unit Owners which is based on any alleged defect in any Unit or the Common Elements, or any damage allegedly sustained by any Unit Owner by reason thereof, but rather, that all such actions shall be instituted by the Person(s) owning such Units or served by such Common Elements or allegedly sustaining such damage. Notwithstanding the above, once the Declarant no longer has the right to appoint and remove directors and officers, as set forth in Section 9(b) of this Declaration, the Association Board of Directors may negotiate the resolution of any alleged defect(s) in the Common Elements on behalf of the Unit Owners and shall have the right and authority to settle and release on behalf of any and all of the Unit Owners claims, causes of action, damages and suits involving the same. Any such settlement and release shall bind all Unit Owners and their successors and assigns.

(f) 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 Declarant, the Association, or the Owner of any property subject to this Declaration, and their respective legal representatives, heirs, successors and assigns. To the maximum extent permitted by Georgia law, the covenants, terms, conditions and restrictions of this Declaration shall have perpetual duration.

(g) Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors, will best effect the intent of the general plan of the Condominium. The provisions hereof shall be liberally interpreted, and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. In the event of any conflicts or inconsistencies between the Act, the Georgia Nonprofit Corporation Code, this Declaration, the Bylaws, and the Rules and Regulations, the terms and provisions of the Act, the Georgia Nonprofit Corporation Code, the Declaration, the Bylaws and the Rules and Regulations, in that order, shall prevail.

(h) Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

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

(j) 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 Condominium.

(k) 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.

(l) Titles. The paragraph or section titles at the beginning of each numbered paragraph or section of this Declaration are for convenience only, and the words contained therein shall not be considered to expand, modify, or aid in the interpretation, construction, or meaning of this Declaration.

(m) 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 George W. Bush, President of the United States.

(n) 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.

(o) Governing Law. This Declaration shall be construed under and in accordance with the laws of the State of Georgia.

(p) Notices. Unless otherwise provided in this Declaration, all notices, demands, bills, statements, or other communications under the Declaration or Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U.S. Mail, first class postage pre-paid: (i) if to a Unit Owner, at the address which the Unit Owner has designated in writing and filed with the Secretary or the Managing Agent or, if no such address has been designated, at the address of the Unit of such Owner; or (ii) if to the Association, the Board of Directors or the Managing Agent, at the principal office of the Association or the Managing Agent, if any, or at such other address as shall be designated by the notice to the Owners in accordance with subsection (i) hereof.

All such notices shall be deemed effective upon personal delivery, or, if mailed, on the postmarked date of the notice.

(q) 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 Unit address or to such other address as the Owner may designate by written notice to the Association.

(r) Meetings of the Association. Meetings of the Association shall be held in accordance with the provisions of the Association's Bylaws. Additionally, a meeting of the Association may be called upon the written request of at least fifteen percent (15%) of the Unit Owners.

IN WITNESS WHEREOF, Declarant has signed and sealed this instrument as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Witness

Notary Public
My Commission Expires: 3-7-08
[Notary Seal]

ATLANTA ALPHARETTA, L.P.,
a Georgia limited partnership,

By: ATLANTA ALPHARETTA GP, INC.,
a Georgia corporation, General Partner

By: _____
Print Name: Charles V. Welden, III
Print Title: President

EXHIBIT "A"

PROPERTY

Legal Description of the Condominium
Phase I

All that tract or parcel of land lying and being in land lot 970 of the 2nd District, 1st Section, Fulton County, Georgia, and being more particularly described as follows:

Commencing at a 3 /4" open top pipe found at the Northwest Corner of Land Lot 970, said corner being common with Land Lots 903, 904, 969, & 970; Thence along the Northern land lot line of land lot 970 South 89 degrees 26 minutes 48 seconds East, a distance of 980.64 feet to a point on the Western right-of-way of State Road 9 (80' right-of-way); Thence along said right-of-way along a curve to the right, an arch length of 309.08 feet, said curve having a radius of 3021.32 feet with a chord distance of 308.95 feet, at South 01 degrees 41 minutes 34 seconds West, to a 5/8" rebar set, Said 5/8" rebar set being the TRUE POINT OF BEGINNING. Thence continuing along said right-of-way of State Route 9 along a curve to the right, an arc length of 142.08 feet, said curve having a radius of 3021.32 feet with a chord distance of 142.07 feet, at South 05 degrees 58 minutes 14 seconds West, to a 5/8" rebar set; Thence leaving said right-of-way North 82 degrees 48 minutes 17 seconds West, a distance of 198.24 feet to a point; Thence South 07 degrees 46 minutes 58 seconds West, a distance of 92.59 feet to a point; Thence along a curve to the to the left, an arc length of 40.26 feet, said curve having a radius of 25.00 feet with a chord distance of 36.05 feet, at South 36 degrees 05 minutes 12 seconds East, to a point; Thence South 79 degrees 57 minutes 22 seconds East, a distance of 171.73 feet to a 5/8" rebar set on the Western right-of-way of State Route 9; Thence continuing along said right-of-way the following courses and distances: along a curve to the to the right, an arc length of 16.34 feet, said curve having a radius of 3021.32 feet with a chord distance of 16.34 feet, at South 09 degrees 53 minutes 20 seconds West, to a point; South 10 degrees 02 minutes 38 seconds West, a distance of 43.66 feet to a 5/8" rebar set; Thence leaving said right-of-way North 79 degrees 57 minutes 22 seconds West, a distance of 169.40 feet to a point; Thence along a curve to the to the left, an arc length of 38.28 feet, said curve having a radius of 25.00 feet with a chord distance of 34.65 feet, at South 53 degrees 54 minutes 48 seconds West, to a point; Thence South 07 degrees 46 minutes 58 seconds West, a distance of 7.10 feet to a point; Thence along a curve to the to the right, an arc length of 163.59 feet, said curve having a radius of 114.00 feet with a chord distance of 149.91 feet, at South 48 degrees 53 minutes 29 seconds West, to a point; Thence North 90 degrees 00 minutes 00 seconds West, a distance of 27.87 feet to a point; Thence North 01 degrees 35 minutes 55 seconds West, a distance of 543.79 feet to a point; Thence North 90 degrees 00 minutes 00 seconds East, a distance of 190.00 feet to a point; Thence South 00 degrees 00 minutes 00 seconds East, a distance of 104.00 feet to a point; Thence South 85 degrees 20 minutes 59 seconds East, a distance of 206.52 feet to a 5/8" rebar set on the Western right-of-way of State Route 9; said 5/8" rebar set being the TRUE POINT OF BEGINNING.

Said tract of land contains 2.951 Acres.

EXHIBIT "B"

ADDITIONAL PROPERTY

Legal Description of the Additional Property

All that tract or parcel of land lying and being in land lot 970 of the 2nd District, 2nd Section of Fulton County, Georgia, and being more particularly described as follows:

BEGIN at a ½-inch rebar set at the intersection of the north land lot line of Land Lot 970 with the western right-of-way line of State Route No. 9 (80 foot right-of-way), run thence along said western right-of-way line the following courses and distances: along a curve to the right an arc distance of 594.91 feet to a point (said arc having a radius of 3,021.32 feet and being subtended by a chord bearing South 04 degrees 24 minutes 10 seconds West a distance of 593.95 feet); South 10 degrees 02 minutes 38 seconds West a distance of 329.49 feet to a 1-inch rod found; thence leaving the aforesaid western right-of-way line, run North 89 degrees 31 minutes 59 seconds West a distance of 783.85 feet to an iron pin found; run thence North 00 degrees 23 minutes 07 seconds East a distance of 36.73 feet to an iron pin found; run thence North 89 degrees 19 minutes 21 seconds West a distance of 105.16 feet to an iron pin found on the west land lot line of said Land Lot 970; run thence along said west land lot line North 00 degrees 43 minutes 39 seconds East a distance of 881.82 feet to the iron pin found at the common corner of Land Lots 903, 904, 969 and 970, run thence along the north land lot line of said Land Lot 970 South 89 degrees 26 minutes 48 Seconds East a distance of 980.04 feet to the ½-inch rebar set at the POINT OF BEGINNING; said parcel containing 19.97 acres as shown on and described according to that certain survey entitled "Plat of Survey for Atlanta Alpharetta, L.P.; Compass Bank and Lawyers Title Insurance Corporation", prepared by Shirley, Nelson and Associates, Inc., and bearing the seal and certification of George W. Nelson, Georgia Registered Land Surveyor No. 966, dated February 14, 2002, revised March 18, 2002, which survey is incorporated herein by reference.

GEORGIA REGISTERED NO. 2411 PROFESSIONAL LAND SURVEYOR TRENTON D. TURK

LESS AND EXCEPT THE FOLLOWING PARCEL:

All that tract or parcel of land lying and being in land lot 970 of the 2nd District, 1st Section, Fulton County, Georgia, and being more particularly described as follows:

Commencing at a 3 /4" open top pipe found at the Northwest Corner of Land Lot 970, said corner being common with Land Lots 903, 904, 969, & 970; Thence along the Northern land lot line of land lot 970 South 89 degrees 26 minutes 48 seconds East, a distance of 980.64 feet to a point on the Western right-of-way of State Road 9 (80' right-of-way); Thence along said right-of-way along a curve to the right, an arch length of 309.08 feet, said curve having a radius of 3021.32 feet with a chord distance of 308.95 feet, at South 01 degrees 41 minutes 34 seconds West, to a 5/8" rebar set, Said 5/8" rebar set being the TRUE POINT OF BEGINNING. Thence continuing along said right-of-way of State Route 9 along a curve to the right, an arc length of 142.08 feet, said curve having a radius of 3021.32 feet with a chord distance of 142.07 feet, at South 05 degrees 58 minutes 14 seconds West, to a 5/8" rebar set; Thence leaving said right-of-way North 82 degrees 48 minutes 17 seconds West, a distance of 198.24 feet to a point; Thence South 07 degrees 46 minutes 58 seconds West, a distance of 92.59 feet to a point; Thence along a curve to the to the left, an arc length of 40.26 feet, said curve having a radius of 25.00 feet with a chord distance of 36.05 feet, at South 36 degrees 05 minutes 12 seconds East, to a point; Thence South 79 degrees 57 minutes 22 seconds East, a distance of 171.73 feet to a 5/8" rebar set on the Western right-of-way of State Route 9; Thence continuing along said right-of-way the following courses and distances: along a curve to the to the right, an arc length of 16.34 feet, said curve having a radius of 3021.32 feet with a chord distance of 16.34 feet, at South 09 degrees 53 minutes 20 seconds West, to a point; South 10 degrees 02 minutes 38 seconds West, a distance of 43.66 feet to a 5/8" rebar set; Thence leaving said right-of-way North 79 degrees 57 minutes 22 seconds West, a distance of 169.40 feet to a point; Thence along a curve to the to the left, an arc length of 38.28 feet, said curve having a radius of 25.00 feet with a chord distance of 34.65 feet, at South 53 degrees 54 minutes 48 seconds West, to a point; Thence South 07 degrees 46 minutes 58 seconds West, a distance of 7.10 feet to a point; Thence along a curve to the to the right, an arc length of 163.59 feet, said curve having a radius of 114.00 feet with a chord distance of 149.91 feet, at South 48 degrees 53 minutes 29 seconds West, to a point; Thence North 90 degrees 00 minutes 00 seconds West, a distance of 27.87 feet to a point; Thence North 01 degrees 35 minutes 55 seconds West, a distance of 543.79 feet to a point; Thence North 90 degrees 00 minutes 00 seconds East, a distance of 190.00 feet to a point; Thence South 00 degrees 00 minutes 00 seconds East, a distance of 104.00 feet to a point; Thence South 85 degrees 20 minutes 59 seconds East, a distance of 206.52 feet to a 5/8" rebar set on the Western right-of-way of State Route 9; said 5/8" rebar set being the TRUE POINT OF BEGINNING.

Said tract of land contains 2.951 Acres.