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Return to: Gaddis Vath Lanier, LLC
Tower Place 200, Suite 700
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Attention: Kimberly C. Gaddis

STATE OF GEORGIA
COUNTY OF FULTON

Reference: Deed Book: 23000
Page: 267

AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR WESTCHESTER SQUARE, A CONDOMINIUM

IMPORTANT NOTICE:

CLOSING ATTORNEYS SHOULD CONTACT THE ASSOCIATION FOR ESTOPPEL CERTIFICATES REGARDING BOTH ASSESSMENTS/ CHARGES DUE ON UNITS AND ANY UNCURED ARCHITECTURAL VIOLATIONS OR UNAUTHORIZED IMPROVEMENTS TO UNITS, PURSUANT TO THE PROVISIONS HEREOF.

COPYRIGHT ©2007 All rights reserved. This Amended and Restated Declaration of Condominium may be used only in connection with the ownership and sale of property at Westchester Square and the operation of the Westchester Square Condominium Association, Inc.

PREPARED BY:

GADDIS VATH LANIER, LLC
Your Neighborhood Attorneys

Kimberly C. Gaddis, Esquire

WHEREAS, Westchester Square, Inc., a Georgia corporation, recorded a Declaration of Record of Westchester Square in November, 1966, in Deed Book 4673, page 45, et seq., Fulton County, Georgia Records (hereinafter referred to as the "Original Declaration"); and Restated and Re-Recorded on September 27, 1984, in Deed Book 9187, Page 424, et seq., Fulton County, Georgia, records ("hereinafter referred to as the "Restated Declaration"); and

WHEREAS, the Original Declaration and the Restated Declaration have been previously amended by amendments recorded in the Fulton County, Georgia Records as follows:

<u>Recording Date</u>	<u>Deed Book/Page</u>
July 26, 1994	18562/138, <u>et. seq.</u> ; and
August 4, 1997 ("Amended and Restated Declaration")	23000/267 <u>et. seq.</u>

WHEREAS, the plats related to the Condominium were filed in Condominium Plat Books of the Fulton County, Georgia Records; and

WHEREAS, floor plans relating to the Condominium were filed in Condominium File Cabinet No. 1, Folder No. 6, of the Fulton County, Georgia Records; and

WHEREAS, Paragraph 45 of the Amended and Restated Declaration provides that the Amended and Restated Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Westchester Square Condominium Association, Inc. ("Association") holding seventy-five (75%) of the total vote thereof, except in certain circumstances where a higher vote is required as provided therein; and

WHEREAS, members of the Association holding seventy-five percent (75%) of the total vote thereof desire to amend those Paragraphs of the Amended and Restated Declaration that may be amended by a 75% vote, and accordingly have approved this Amendment; and

WHEREAS, in accordance with Article VI, Section 8 of the Amended and Restated Bylaws of Westchester Square Condominium Association, Inc. that were attached to and recorded with the Amended and Restated Declaration ("Amended and Restated Bylaws"), the Amended and Restated Bylaws may be amended by the affirmative vote and written consent of members holding sixty-six and two-thirds (66-2/3%) percent of the total vote of the Association; and

WHEREAS, members holding at least sixty-six and two-thirds percent (66-2/3%) of the total vote of the Association have approved this amendment to the Amended and Restated Bylaws; and

WHEREAS, this amendment is not material with respect to mortgagees in that it does not materially and adversely affect the security title or interest of any mortgagee; provided, however, in the event a court of competent jurisdiction determines that this amendment does materially and adversely affect the security title or interest of any mortgagee without such mortgagee's consent to this amendment, then this amendment shall not be binding on the mortgagee so involved, unless such mortgagee consents to this amendment; and if such consent is not forthcoming, then the provisions of the Declaration prior to this amendment shall control with respect to the affected mortgagee;

NOW, THEREFORE, the Amended and Restated Bylaws and the Amended and Restated Declaration and all exhibits thereto and all amendments to the foregoing, are hereby stricken in their entirety and the following is simultaneously substituted therefor:

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
FOR
WESTCHESTER SQUARE CONDOMINIUM**

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All rights reserved. This Amended and Restated Declaration may be used only in connection with the ownership and sale of property at Westchester Square Condominium and the operation of the Westchester Square Condominium Association, Inc.

TABLE OF CONTENTS –

1. NAME 2

2. DEFINITIONS 2

3. LOCATION, PROPERTY DESCRIPTION, PLATS AND PLANS 4

4. UNITS 4

5. COMMON ELEMENTS 4

6. LIMITED COMMON ELEMENTS 5

7. ASSOCIATION MEMBERSHIP AND ALLOCATION OF VOTES 5

8. ALLOCATION OF LIABILITY FOR COMMON EXPENSES 5

9. ASSESSMENTS 6

10. MAINTENANCE RESPONSIBILITY 9

11. ARCHITECTURAL CONTROLS 11

12. USE RESTRICTIONS 14

13. LEASING 20

14. SALE OF UNITS 23

15. INSURANCE 24

16. REPAIR AND RECONSTRUCTION 27

17. EMINENT DOMAIN 28

18. EASEMENTS 28

19. MORTGAGEES' AND OWNERS' RIGHTS 30

20. AUTHORITY AND ENFORCEMENT 31

21. AMENDMENTS 33

22. GENERAL PROVISIONS 33

EXHIBITS

DESCRIPTION OF SUBMITTED PROPERTY "A"

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

MAINTENANCE CHART "C"

BYLAWS "D"

1. NAME.

The name of the condominium is Westchester Square Condominium (hereinafter sometimes called "Westchester Square" or the "Condominium," as further defined herein), which condominium is submitted to the Georgia Condominium Act, O.C.G.A. § 44-3-70, *et seq.* (1991 and Supp. 2002).

2. DEFINITIONS.

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

(a) Act means the Georgia Condominium Act, O.C.G.A. § 44-3-70, *et seq.* (1991 and Supp. 2002), as such Act may be amended from time to time.

(b) Architectural Control Committee or ACC means the committee established to exercise the architectural review powers set forth in Paragraph 11 hereof, which shall be the Board of Directors of the Association unless by resolution the Board appoints a separate Architectural Control Committee.

(c) Area of Common Responsibility means and refers to the Common Elements, together with those areas, if any, which, by the terms of this Declaration or by contract or agreement with any other Person, become the responsibility of the Association. Any public rights-of-way, within or adjacent to the Condominium, may be considered by the Board to be part of the Area of Common Responsibility.

(d) Articles or Articles of Incorporation means the Articles of Incorporation of Westchester Square Condominium Association, Inc., filed with the Secretary of State of the State of Georgia.

(e) Association means Westchester Square Condominium Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

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

(g) Bylaws means the Bylaws of Westchester Square Condominium Association, Inc., attached to this Declaration as Exhibit "D" and incorporated herein by this reference.

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

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

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

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

(l) Condominium Instruments mean this Declaration and all exhibits hereto, including the Association's Bylaws, and the Survey and Floor Plans, all as may be supplemented or amended from time to time.

(m) Domestic Partner means any adult who cohabitates with an Owner and who has been designated as the Owner's Domestic Partner in a written statement, signed by the Owner and filed with the Association's Secretary. A person shall no longer be a Domestic Partner upon the Secretary's receipt of a written termination notice, signed by either the Owner or the Domestic Partner.

(n) Effective Date means the date that this Declaration is recorded in the Fulton County, Georgia land records.

(o) Electronic Record means information created, transmitted, received or stored by electronic means and retrievable in human perceivable form, such as email, web pages, electronic documents, and facsimile transmissions.

(p) Electronic Signature means a signature created, transmitted, received or stored by electronic means and includes, but is not limited to, a Secure Electronic Signature.

(q) Eligible Mortgage Holder means a holder of a first Mortgage secured by a Unit in the Condominium who has requested in writing notice of certain items as set forth in this Declaration.

(r) Floor Plans means the floor plans for Westchester Square Condominium, filed in the Condominium File Cabinet (including File Cabinet No. 1, Folder No 6) of the Fulton County, Georgia records.

(s) Limited Common Elements mean a portion of the Common Elements reserved for the exclusive use of those entitled to occupy one (1) or more, but less than all, Units, as more particularly set forth in this Declaration, including Exhibit "A" hereof.

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

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

(v) Mortgagee or Mortgage Holder means the holder of any Mortgage.

(w) Occupant means any Person staying overnight in a Unit for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year, regardless of whether such Person is a tenant or the Owner of such Unit.

(x) Officer means an individual who is elected by the Board to serve as President, Vice President, Secretary, or Treasurer, or such other subordinate officers as the Board may determine necessary and as authorized by the Bylaws.

(y) Owner shall mean the record titleholder of a Unit within the Condominium, but shall not include a Mortgage Holder. For purposes hereof, the holder of a tax deed on a Unit shall be deemed the Owner thereof, notwithstanding the fact that there may exist a right of redemption on such Unit.

(z) Person means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

(aa) Secure Electronic Signature means an electronic or digital method executed or adopted by a Person with the intent to be bound by or to authenticate a record, which is unique to the Person using it, is capable of verification, is under the sole control of the Person using it, and is linked to data in such a manner that if the data is changed, the electronic signature is invalidated.

(bb) Survey means the plat of survey for Westchester Square Condominium, filed in the Condominium Plat Book of the Fulton County, Georgia records.

(cc) Unit (and/or "Dwelling") means that portion of the Condominium intended for individual ownership and use as more particularly described in this Declaration and shall include the undivided ownership in the Common Elements assigned to the Unit by this Declaration.

3. LOCATION, PROPERTY DESCRIPTION, PLATS AND PLANS

The Condominium subject to this Declaration and the Act is located in Land Lot 105 of the 17th District of Fulton County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. The Survey and Floor Plans relating to the Condominium has been filed in Condominium Plat Book 64-50R, Pages 1-12 and Condominium Cabinet 1, Folder No. 6 of the Fulton County, Georgia records. The Survey and Floor Plans are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

4. UNITS

The Condominium is divided into twenty-three (23) separate Units, the Limited Common Elements and the Common Elements. Each Unit consists of a dwelling and its appurtenant percentage of undivided interest in the Common Elements as shown on Exhibit "B" as attached to this Declaration and incorporated herein by this reference. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the Act and the Condominium Instruments. The Units are depicted on the Survey and the Floor Plans. Each Unit includes that part of the structure which lies within the boundaries described in Exhibit "A" attached hereto. Each of said dwellings is depicted on the plat, floor plans and elevation drawings described in Exhibit "B" and filed in the office of the Clerk of the Superior Court of Fulton County, Georgia.

5. COMMON ELEMENTS.

The terms Common Elements, Common Areas and Common Facilities specifically include (but are not limited to) that part of the land not included within the boundaries of each dwelling; foundations, bearing walls, all utility lines, sewer lines, water lines, pipes, wires, conduits, and duct work serving more than one dwelling; driveways, pavement, retaining walls, drainage structures, parking spaces, shrubbery and trees.

The Common Elements shall remain undivided, and no Owner or any other person shall bring any action for partition or division of the whole or any part thereof except as provided in the Act. Except as provided for Limited Common Elements or as otherwise provided herein, each Owner and the Association may use the Common Elements for the purposes for which they are intended, but no such use shall enter or encroach upon the lawful rights of the other Owners.

6. LIMITED COMMON ELEMENTS.

All Limited Common Elements identified in Exhibit "A" and the related drawings are reserved for the exclusive use of Owners and occupants of specific dwellings indicated thereon. The reservations expressed in this paragraph shall not be or become enlarged, diminished or varied by any custom, practice, or usage that may ensue hereafter.

7. ASSOCIATION MEMBERSHIP AND ALLOCATION OF VOTES.

(a) Membership. All Unit Owners, by virtue of their ownership of a fee or undivided fee interest in any Unit in the Condominium, are members of the Association. This is not intended to include Persons who hold an interest merely as security for the performance of an obligation, but the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Unit owned.

(b) Voting. The Owner or collective Owners of the Unit shall be entitled to one (1) equally weighted vote for such Unit. When more than one (1) Person holds an ownership interest in any Unit, the vote for such Unit shall be exercised as those Owners determine among themselves, otherwise the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.

8. ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

(a) General Allocations. Except as provided below or elsewhere in the Act or Condominium Instruments, the amount of all Common Expenses shall be assessed against all the Units in accordance with the percentage of undivided interest in the Common Elements appurtenant to the Unit as set forth in Exhibit "B" attached hereto and incorporated herein by this reference.

(b) Specific Special Assessments. Nevertheless, the Board shall have the power to levy specific special assessments against Units pursuant to this Paragraph and to Section 44-3-80(b) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board to do so shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Paragraph in the future. However, except as provided below or elsewhere in the Condominium Instruments, Common Expenses associated with the maintenance, repair, renovation, restoration or replacement of Limited Common Elements and those items designated as the Association's maintenance responsibility and obligation under Exhibit "C" shall not be specially or specifically assessed against any Unit, but shall be assessed as part of the general Common Expenses as allocated in Section 8(a) above. Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units or by the Occupant(s), licensees or invitees of any such Unit or Units may be specifically specially assessed against such Unit or Units, including fines for violation of the governing legal documents

For purposes of this subparagraph, nonuse shall constitute a benefit to less than all Units or a significant disproportionate benefit among all Units only when such nonuse results in an identifiable, calculable reduction in cost to the Association.

(c) The Condominium currently is served by a common water meter. If the Board chooses to impose a "residential utility billing" system, the Board shall have the right to add a charge for the cost of overhead for such services. "Residential utility billing" systems base utility charges upon a Unit's percentage of undivided interest in the Common Elements as depicted in Exhibit "B" attached to this Declaration.

If the Board chooses to install submeters for each Unit (which decision shall be in the sole discretion of the Board), the costs of doing so shall be charged back to the Units as specific special assessments. Thereafter, the Board shall have the authority to assess individual Unit utility usage

charges as specific special assessments based on readings of the submeters. In the alternative, the Board has the right to specifically specially assess the Units based upon reasonable estimates of utility usage charges with adjustments after periodic submeter readings. The Board also shall have the right to add a charge for the overhead for such sub-metering and meter reading.

9. ASSESSMENTS.

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

(b) Creation of the Lien and Personal Obligation For Assessments. Each Owner by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments; (iii) specific special assessments against any particular Unit which are established pursuant to the terms of this Declaration, including but not limited to reasonable fines imposed in accordance with the terms of this Declaration. All assessments are due and owing each year by every Owner regardless of whether or not an Owner uses any amenity or receives a particular service.

All such assessments, together with charges, interest, costs, and reasonable attorney's fees actually incurred (including post-judgment attorney fees, costs and expenses), and if the Board so elects, rents, in the maximum amount permitted by the Act, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment fell due. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. The Association, in the Board's discretion, may, but shall not be obligated to, record a notice of such lien in the Fulton County, Georgia records evidencing the lien created under the Act and this Declaration.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors; unless otherwise provided, the annual assessments shall be paid in equal quarterly installments due on the first day of each quarter. No Owner may exempt him or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, nonuse of the Common Elements, the Association's failure to provide services or perform its obligations required hereunder, or inconvenience or discomfort arising from the Association's performance of its duties.

The lien provided for herein shall have priority as provided in the Act.

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

(i) If the annual assessment, any part or installment thereof or any other fine, special assessment or charge is not paid in full within ten (10) days of the due date, or such later date as may be provided by the Board:

(A) a late charge equal to the greater of Ten and No/100 Dollars (\$10.00) or ten percent (10%) of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner;

(B) interest at the rate of ten percent (10%) per annum, or such higher rate as may be authorized by the Act, shall accrue from the due date; and

(C) upon thirty (30) days written notice to the Owner, the Board may accelerate and declare immediately due all of that Owner's unpaid installments. Upon acceleration, that Owner shall thereby lose the privilege of paying any and all assessments and charges in installments for that fiscal year, unless such privilege is otherwise reinstated in the Board's sole discretion.

(ii) If assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Owner's and Occupant's rights to vote and use the Common Elements shall be automatically suspended until all amounts owed are paid in full (provided, however, the Board may not deny ingress or egress to or from a Unit) and the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Condominium Instruments, the Act and Georgia law, including reasonable attorney's fees actually incurred. Enforcement under this subparagraph is not dependent upon or related to other restrictions and/or other actions.

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

However, the Board may suspend any utility or service paid for as a Common Expense only after a final judgment or judgments in excess of a total of Seven Hundred Fifty and No/100 Dollars (\$750.00), or such other amount as required by the Act, are obtained in favor of the Association from a court of competent jurisdiction, the Association provides the notice required to be provided by the institutional provider of such service prior to suspension of such service, and the Association complies with any other requirements of Georgia law. An Owner whose utility or service has been suspended shall not be entitled to use any such utility or service paid for as a Common Expense from any source and any such unauthorized use shall be considered a theft of services under O.C.G.A. § 16-8-5. The utility or service shall not be required to be restored until all judgments are paid in full, at which time the Association shall direct the utility or service provider to restore the utility or service. Enforcement under this subparagraph is not dependent upon or related to other restrictions and/or other actions.

(iv) If part payment of assessments or other charges is made, the amount received may be applied first to post-judgment attorney's fees, costs and expense, then to costs and attorney's fees not reduced to a judgment, then to interest, then to late charges, then to delinquent assessments and then to current assessments. Late charges may be assessed on delinquencies that are created by the application of current payments to outstanding delinquent assessments or charges.

(d) Computation of Operating Budget and Assessment. Prior to the beginning of each fiscal year, the Board shall prepare an Operating Budget covering the estimated costs of operating the Condominium during the coming year, together with the annual assessment for the coming year. The Board shall cause the budget and notice of the assessment(s) to be delivered to each member at least thirty (30) days prior to the due date for such assessment, or the first installment thereof and at least seven (7) days prior to a duly called meeting to present the budget to the members, such meeting to be held prior to the commencement of the budget year. The budget and the assessment shall become effective unless disapproved at a duly called Association meeting by a vote of a majority of the total Association membership. Such right to disapprove of the operating budget shall terminate fourteen (14) days after the presentation of the budget at the meeting described above.

In the event that the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. In such case, the Board may propose a new budget at any time during the year at a special meeting of the Association. The proposed new budget and assessment shall be delivered to the members at least twenty-one (21) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The new budget and the assessment shall become effective unless disapproved at a duly called Association meeting by a vote of a majority of the total Association membership in person or by proxy. Such right to disapprove of the new operating budget shall terminate fourteen (14) days after the presentation of the budget.

The budget shall not operate as a limitation on expenditures by the Board, but, rather, the budget is merely an estimate of Common Expenses on which the Board may base the annual assessments.

(e) Special Assessments. In addition to the annual assessment provided for in subparagraph (d) above, the Board may, at any time, and in addition to any other rights it may have, levy a special assessment against all Owners, notice of which shall be sent to all Owners. In order to be effective, any special assessment (except as provided in Paragraph 8(b) regarding the power to impose specific special assessments and Paragraph 16 regarding repair or reconstruction of casualty damage to or destruction of all or part of the Condominium) which would cause the average total of special assessments levied in one (1) fiscal year to exceed Two Hundred and No/100 Dollars (\$200.00) per Unit or such higher amount as may be authorized by the Act, must first be approved by a majority of the total Association membership in person or by proxy at a duly called meeting of the members notice of which shall specify the purpose of such meeting.

(f) Reserve Budget and Contribution. The Board may, but shall not be obligated to, annually prepare a reserve budget that shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board may, but shall not be obligated to, set the required reserve contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the reserve budget, with respect both to amount and timing over the period of the budget. The annual reserve contribution required, if any, shall be fixed by the Board and may be included within the operating budget and assessment as provided in subparagraph (d) of this Paragraph. A copy of the reserve budget shall be delivered to each member at the same time that the operating budget is delivered to the membership under subparagraph (d) above. The annual reserve budget and the annual reserve contribution amount, if any, included in the operating budget, shall require approval of a majority of the total association membership voting in person or by proxy at a duly called meeting of the members.

(g) Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against such Unit. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding Ten and No/100 Dollars (\$10.00), or such higher amount as may be authorized by the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Unit as of the date specified therein. The Association may require an additional fee not to exceed Twenty Five and No/100 Dollars (\$25.00) if the Association provides a copy of the Declaration and Bylaws to any such Person in connection with a closing or otherwise upon request. Upon any Closing, the pro-rated annual assessment accrued as of the closing date, shall be included in the Statement of Account and due and payable at the Closing

(h) Surplus Funds and Common Profits. Pursuant to the Act, common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of

Directors, be: (1) distributed to the Owners; (2) credited to the next assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Unit; or (3) added to the Association's reserve account as set forth in subparagraph (f) of this Paragraph.

10. MAINTENANCE RESPONSIBILITY.

(a) Owner's Maintenance Responsibility. Except as otherwise designated in subsection (b) herein below with respect to portions of the Units which have been expressly made the maintenance obligation of the Association, each Owner shall have the obligation to maintain and keep in good repair all portions of his or her Unit.

In addition, each Owner shall have the responsibility:

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

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

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

Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or Occupant which is the responsibility of the Association hereunder (including, but not limited to landscaping of Common Elements) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair. The foregoing in no way confers any right on any Owner to make any improvements to the Common Elements, the Association reserving the right to disapprove of any such action and to prohibit or remove any such work at such Owner's expense.

(b) Association's Maintenance Responsibility. The Association shall maintain and keep in good repair as a Common Expense the "Area of Common Responsibility," which includes, without limitation, the following:

(i) All Common Elements; and

(ii) All Limited Common Elements and the items expressly designated as the Association's maintenance responsibility on the Maintenance Responsibility Chart attached hereto as Exhibit "C" and incorporated by reference herein.

(c) Chimneys and chimney flues. Additionally, the Association shall have the right, but not the obligation, to conduct a periodic inspection, on a schedule to be determined by the Board of Directors, of all fireplaces and chimney flues and, if, in the Board of Director's sole discretion, a flue needs to be cleaned and/or repaired, the Association shall provide such cleaning and/or repair (even though the flues are considered a portion of the Unit) and the cost of such periodic inspection, cleaning and/or repair may be assessed against the Owner of the Unit served by such flue pursuant to Paragraph 8(b).

(d) Association Maintenance of Owner Items. If, during the course of performing its maintenance responsibilities hereunder, the Association discovers that maintenance, repair or replacement is required of an item which is the Owner's responsibility, and such maintenance, repair or replacement must

be performed for the Association to complete its maintenance obligations, then the Association may perform such work on behalf of the Owner and at the Owner's sole expense, if the Owner has been notified but fails to perform said maintenance after 30 days, or a longer period as agreed by the Board; or without prior notice to the Owner in the case of an emergency situation as defined in paragraph 18 (b).

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

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

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

(h) Measures Related to Insurance Coverage.

(i) The Board, upon resolution, shall have the authority to require all or any Owners to do any act or perform any work involving portions of the Condominium which are the maintenance responsibility of the Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Condominium, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring Owners to install and maintain smoke detectors, requiring Owners to certify that they have checked the batteries for their smoke detectors, requiring Owners to allow the Association or its insurance carrier to inspect the smoke detectors and replace batteries if needed on a schedule to be determined by the Association or its insurance carrier.

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

(i) Mold and/or Mildew. Mold and/or mildew can grow in any portion of the Condominium that is exposed to a regular source of moisture. Therefore, the Association and the Unit Owners agree to: (i) promptly investigate to determine the source of the problem and the extent of the condition upon the discovery of any water leaks; (ii) repair any such leaks in their respective areas of maintenance responsibility in a good and workmanlike condition; (iii) insure that any building material which has absorbed water or moisture as a result of a water leak and has not been completely dried as part of the repair of the water or moisture damage is removed and replaced; and (iv) clean any area where mold and/or mildew appears with industry-accepted product designed to inhibit the growth of mold and/or mildew.

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

Unless the Board of Directors determines that an emergency exists, the Owner shall have thirty (30) days within which to complete maintenance or repair, or longer if agreed by the Board. If the Board determines that: (i) an emergency exists or (ii) that an Owner has not complied with the demand given by the Association as herein provided; then the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment, as a specific special assessment, to which such Owner is subject, shall become and be the personal obligation of the Owner and a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

(k) Maintenance Standards and Interpretation. All maintenance and other work performed by any party under this Declaration shall be performed consistent with the Community-Wide Standard. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board to another term of the Board. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Paragraph. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

11. ARCHITECTURAL CONTROLS.

(a) Architectural Control Committee. The Architectural Control Committee ("ACC") shall constitute a standing committee of the Association. The ACC shall consist of the Board, unless the Board delegates to other Persons the authority to serve on the ACC. At all times, however, the chairperson of the ACC shall be a Board member. The ACC shall have the authority to select and employ professional consultants to assist it in discharging its duties, the cost of such consultants to be paid by the Owner of any Unit for which plans and specifications have been submitted for approval. The Owner of any such Unit shall be responsible for paying the full costs of each review, whether or not submitted plans and specifications are approved by the ACC, and the ACC may require payment of all such costs prior to approval of plans and specifications. The ACC also may charge reasonable fees to cover the cost of review or inspections performed hereunder, and any such fees shall be published in the design standards.

(b) Compliance with Architectural Standards.

(i) Original Requirements. In order to preserve the architectural appearance of Westchester Square as the same was originally designed and constructed, no Owner shall change, modify or alter in any way or matter whatsoever, the design and appearance of any of the exterior surfaces, facades and elevations from that of its original construction and design; nor shall any Owner

paint or decorate the surface of any exterior masonry or brick structure or member; nor change the color of any exterior surface of exterior door, gate or fence, nor change the color of the roof of his dwelling; nor change the design or color of the exterior lights; nor install, erect or attach to any part of the exterior of his dwelling any sign of any kind whatsoever; nor install, erect or attach to any part of the exterior or roof of the dwelling any sort of radio or television aerial; nor shall any Owner erect or construct any fence or exterior wall other than those constructed in the original construction in accordance with the original plans and specification, unless such Owner shall have first obtained the unanimous consent in writing of all of the other Owners and such mortgagees as may have title or interest in any dwelling at Westchester Square.

In the event that there is a conflict between the above paragraph and any other provision of the Condominium Instruments, the above paragraph will control.

(ii) ACC Requirements. Except as otherwise provided herein, no Owner, Occupant, or any other person may, without first obtaining written approval through the processes referred to in sub Paragraph (d) below:

(a) make any encroachment onto the Common Elements or Limited Common Elements;

(b) make any exterior change, exterior alteration, or exterior construction (including painting and landscaping) on any Unit or on the Common Elements or Limited Common Elements (for these purposes an exterior change, alteration or construction is any change, alteration or construction that can be seen from the exterior of the Unit or from the Common Elements or from another Unit); or

(c) erect, place or post any object, sign, clothesline, speaker, playground equipment, light, storm door or window, fountain, or thing on the exterior or roof(s) of the building(s), in any windows, on any Limited Common Elements, on any other Common Elements or any other component of the Area of Common Responsibility. However, standard security signs may be placed on a Unit or in the Limited Common Elements assigned to the Unit, subject to regulation by the Board or ACC.

(c) Alteration of Units. Subject to the other provisions of this Declaration, alterations to the interiors of Units, relocation of the boundaries between adjoining Units, and subdivision of Units are subject to the following restrictions:

(i) Relocation of Boundaries. Boundaries between adjoining Units may be relocated only in accordance with the provisions of O.C.G.A. § 44-3-91 and this Declaration.

(ii) Subdivision of Units. An Owner may not subdivide his Unit.

(iii) Alteration of the Interior of Units. An Owner may without ACC approval alter the interior of a Unit so long as the Owner: (a) complies with all laws, ordinances, codes and governmental regulations and obtains all required permits, (b) does not impair in any way the structural integrity of the Unit, other Units or any other structural element of the Condominium, and (c) complies with the rules and regulations of the Association, such as, without limitation, any rules concerning hours of work, noise, obstruction of Common Elements or Units, debris removal, notice to the Association of the improvements for insurance purposes, and the like. For purposes of this Paragraph alteration of the interior of a Unit shall mean any alteration of the Unit that cannot be seen from the exterior or from the Common Elements or other Units. Any alteration of a Unit that can be seen from the exterior or from the Common Elements or other Units shall be deemed an exterior alteration that is governed by sub Paragraph 11(b) above.

(d) Review Process and Required Action by the Board/ACC and Unit Owners. The Board shall establish in its discretion rules and regulations for the review and approval of any work to be done by

an Owner that requires approval under subparagraph (b)(ii) above. If the ACC determines that an Owner's application for approval involves work that is described in subparagraph (b)(i) above or that is not clearly consistent with the architectural or aesthetic character of the Condominium, such application shall only be approved by an affirmative vote of 100% of the Unit Owners. The Unit Owners shall be the sole arbiters of such application and may withhold approval for any reason, including purely aesthetic considerations. Once an application is approved, all work must be done in a manner consistent with the application and any conditions imposed by the ACC. The Board or the ACC may stop any work that is not consistent.

(e) Encroachments onto Common Elements. The ACC, subject to this Paragraph, may permit Unit Owners to make encroachments onto the Common Elements as it deems acceptable. Such permission or approval, if granted, shall be provided in writing to the Owner. If any Owner or Occupant makes any other exterior change, alteration, or construction (including landscaping) upon the Common Elements or Limited Common Elements without permission or approval as described in this Paragraph, he or she does so at his or her sole risk and expense. The Board may require that such unapproved change, alteration or construction be removed by the Owner or that it remain on the Common Elements or Limited Common Elements without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction. Notwithstanding the foregoing in this sub Paragraph (e): (i) such approval by the ACC may be revoked at any time by the ACC or the Board or a majority vote of the members at a duly called meeting of the members and (ii) approval by the ACC under this subparagraph of any encroachment that violates the provisions of sub Paragraph 11(b)(i) may be revoked by written notice to the Association from any Owner.

(f) Impact on Ongoing Maintenance and Insurance - Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance of such change, modification, addition, or alteration, unless otherwise agreed to in writing by the ACC. If the modification involves or affects the type of Condominium component for which the Association has maintenance responsibilities under Paragraph 10 and Exhibit "C" and if, at any time, the Association determines that it is most feasible for the Association to perform the actual maintenance of the modifications, the Association may perform such maintenance and the Owner applicant and all successors in title may be specifically and specially assessed for such increased costs pursuant to sub Paragraph 8(b). Similarly, if the modification involves a component that is to be insured by the Association the Owner applicant and all successors in title may be specifically and specially assessed pursuant to sub Paragraph 8(b) for any increased costs of insurance maintained by the Association. Such assessment may be made at any time, regardless of whether or not any previous assessments had been made for such insurance costs.

(g) Limitation of Liability. Review and approval of any application pursuant to this Paragraph may be made on any basis, including solely the basis of aesthetic considerations, and neither the Board of Directors nor the ACC nor the other Owners shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations, and other governmental requirements. Neither the Association, the Board of Directors, the ACC, nor member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner, design, or quality of approved construction or modifications to any Unit, nor may any action be brought against the Association, the Board of Directors, the ACC, or any member of any of the foregoing, for any such injury, damage or loss.

(h) No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors and ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of the Board of Directors, the ACC and the Owners of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board of Directors, or the ACC or

the Owners shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(i) Commencement of Construction. All changes, modifications and improvements approved hereunder must be commenced within six (6) months from the date of approval. If not commenced within such time, then such approval shall be deemed revoked, unless the ACC gives a written extension for commencing the work. All work approved hereunder shall be completed in its entirety within ninety (90) days from the date of commencement, unless otherwise agreed in writing by the ACC. All approved changes, modifications, and improvements must be completed in their entirety. An Owner may not construct only a portion or part of an approved change, modification, or improvement.

12. USE RESTRICTIONS.

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

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

(a) Use of Units.

(i) Residential/Business Use. Each Unit shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Unit or any part of the Condominium, except that the Owner or Occupant residing in a Unit may conduct ancillary business activities within the Unit so long as:

(A) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the Unit;

(B) the business activity does not involve visitation of the Unit by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential Unit without business activity;

(C) the business activity is legal and conforms to all zoning requirements for the Condominium;

(D) the business activity does not increase traffic in the Condominium in excess of what would normally be expected for residential Units in the Condominium without business activity (other than by a reasonable number of deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);

(E) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;

(F) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium, as determined in the Board's discretion; and

(G) the business activity does not result in a materially greater use of Common Elements or Association services.

The terms "business" and "trade," as used herein, shall have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the use of a Unit by an on-site management agent operating on behalf of the Association shall not be considered a trade or business within the meaning of this Paragraph.

(ii) Number of Occupants. The maximum number of Occupants in a Unit shall not exceed a total of six (6) people per Unit. "Occupancy" for purposes hereof shall be defined as staying overnight in a Unit for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year. This occupancy restriction shall not apply to require the removal of any person lawfully occupying a Unit on the Effective Date hereof. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto.

(b) Outbuildings. No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected or used by any Owner or Occupant on any portion of the Condominium, at any time, either temporarily or permanently, without the prior written approval of the Board.

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

With prior written Board approval, and subject to any restrictions imposed by the Board, Owner(s) and/or Occupant(s) may reserve portions of the Common Elements for use for a period of time as set by the Board. Any such Owner(s) and/or Occupant(s) who reserve a portion of the Common Elements as provided herein shall assume, on behalf of himself/herself/themselves and his/her/their Occupants, guests and family, all risks associated with the use of the Common Elements and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

There shall be no use of the roof(s) of the Condominium building(s) by the Owners, Occupants, their family members, guests, tenants, invitees, agents or contractors. The Association and its agents and contractors shall have access to the roof(s) for performing its maintenance and repair responsibility. There shall be no gardening or landscaping on the Common Elements or the Limited Common Elements by Owners or Occupants without the prior written consent of the Board.

The Association shall not be liable to the Owner of any Unit or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements.

(d) Use of Limited Common Elements, and Patios.

(i) Limited Common Elements. Except as otherwise provided herein, the use of the Limited Common Elements assigned to the Units is restricted exclusively to the Owners of the Unit to which such Limited Common Elements are assigned and said Owner's Occupants, guests, family members and invitees. The Limited Common Elements are reserved for exclusive use, but shall not be construed or interpreted to be separate and apart from the Common Elements in general, and the restrictions applicable to the Common Elements shall also apply to the Limited Common Elements.

(ii) Patios. Objects over existing wall height shall not be allowed except as may be authorized in writing by the Board. Objects shall not be permitted to hang over or be attached to any exterior patio wall or otherwise protrude outside of the vertical plane formed by the exterior surface of the patio wall, with the exception of a simple, undecorated, metal arch on which to train a vine, or plants, shrubs or trees. Penetration of the surfaces of a patio wall or floor is prohibited. No trees may be planted in the patio area without approval of the Board. Trees or large shrubs which are damaging buildings or walls are subject to being removed by the Unit Owner, at the Unit Owner's sole cost and expense, at the Board's discretion.

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

The Units in the Condominium are built in close proximity to one another, resulting in the sharing of common walls. As a result, noise and vibration may be detectable between Units or between Units and the Common Elements. Therefore, an Owner or Occupant shall not conduct activities within a Unit or use a Unit in a manner that interferes with or causes disruption to the use and quiet enjoyment of another Unit by its respective Owner and Occupant.

Furthermore, noxious, destructive, offensive or unsanitary activity shall not be carried on upon the Condominium. No Owner or Occupant may use or allow the use of the Unit or any portion of the Condominium at any time, in any way, which may endanger the health or property of other Occupants, unreasonably annoy, disturb or cause embarrassment or discomfort to other Owners or Occupants, or, in the Board's discretion, constitute a nuisance. The intention of this provision is to grant the Association and aggrieved Owners and Occupants a right of redress for actions, activities or conduct which unreasonably disturbs or impairs the peaceful and safe enjoyment of the Condominium. In this regard, specific unauthorized and unreasonable annoyances or disturbances shall include, but not be limited to, the following:

(i) Any fighting, screaming, shouting, excessively loud talking, whistling, or playing of music or television, raucous behavior or insobriety either outside of a Unit at any time or within a Unit if such conduct can be heard in the normal course of activities in any other Unit(s);

(ii) The use of any alarm, equipment, or device, mechanical or otherwise, which creates or produces excessively loud sounds or any vibrations either outside of a Unit at any time or within a Unit if such sounds can be heard or vibrations felt in the normal course of activities in any other Unit(s);

(iii) Any threatening or intimidating conduct towards any resident, guest or pet at the Condominium;

(iv) Any conduct which, in the Board's reasonable discretion, creates any danger or risk of injury to others or damage to property at the Condominium or which creates any threat to health or safety of any other resident or pet;

(v) Any excessively loud play or playground activities either outside of a Unit at any time or within a Unit if such conduct can be heard in the normal course of activities in any other Unit (s);

(vi) Any conduct which creates any noxious or offensive odor either outside of a Unit at any time or within a Unit if such odors can be detected in the normal course of activities in any other Unit (s);

(vii) Any incessant or excessive pet noises, including dog barking, if such conduct can be heard in the normal course of activities in any other Unit;

(viii) Any construction or similar activities in a Unit that can be heard in other Units between the hours of 6:00 p.m. and 8:00 a.m. on weekdays, or any time on a weekend (or such other hours and times as may be established by the Board in its rules and regulations) unless authorized in writing by the Board; or

(ix) Any similar action or activity outside of a Unit on the Condominium, or which occurs inside a Unit but which interferes with the peaceful use and enjoyment of other Units or the Common Elements by any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Unit.

However, nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed individually against a violator hereof for relief from interference with his or her property or personal rights, and the Board may, in its discretion, require aggrieved individuals to seek redress personally for interference with their personal property rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or otherwise shall exist by an aggrieved Owner or Occupant against the Association for failure to enforce the provisions hereof if the aggrieved Owner or Occupant has not personally pursued all available remedies against the violator for redress provided under Georgia law.

No Unit Owner or Occupant may use or allow the use of the Unit or the Common Elements in any manner which creates noises between the hours of 11:00 p.m. and 8:00 a.m., or such other hours as may be established by the Board in its rules and regulations, which can be heard by persons in another Unit that will, in the Board's sole discretion, unreasonably interfere with the rights, comfort or convenience of any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Unit.

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

No damage to or waste of the Common Elements, or any part thereof, shall be permitted by any Owner or any Occupant, guest or invitee of any Owner. Each Owner and Occupant shall indemnify and hold the Association and the other Owners harmless against all loss to the Association or other Owners resulting from any such damage or waste caused by such Owner or Occupant, or the Owner's or Occupant's guest or invitee.

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

(g) Pets. No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on

any part of the Common Elements, including Limited Common Elements, without prior written approval pursuant to Paragraph 11(b). All dogs must be under the verbal control of a responsible person at all times while on the Common Elements. If the Board determines that a dog is not under the verbal control of its guardian, the Board may issue a notice to the Owner and require that the dog be kept on a leash under the physical control of a responsible person at all times thereafter while on the Common Elements. Feces left by pets upon the Common Elements, Limited Common Elements or in the Units, including the pet Owner's Unit, must be bagged and removed promptly by the owner of the pet or the person responsible for the pet. Dogs shall not urinate on lawns or landscaping in the Common Elements or the Limited Common Elements.

No potbellied pigs, venomous snakes, pit bulldogs, rottweillers, doberman pinschers, or other animals determined in the Board's sole discretion to be dangerous may be brought onto or kept on the Condominium at any time. The Board may require that any pet which, in the Board's opinion, endangers the health of any Owner or Occupant or creates a nuisance or unreasonable disturbance be permanently removed from the Condominium upon seven (7) days written notice. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet and/or obtain a court order requiring the Owner or Occupant to do so. Without prior notice to the pet's owner, the Board may remove any pet, which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any community member.

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

(h) Parking. Each Unit has one (1) space within the garage which is part of the Unit (some Units have converted these to alternative uses) and one (1) parking space in the driveway adjacent to the Unit assigned as a Limited Common Element, exclusively serving that particular Unit. Such designated parking spaces may only be used by the Owner or Occupants of the Unit and their guests and families. Any other vehicles shall be parked in guest parking. If parking in guest parking becomes a problem, the Board may restrict spaces or publish parking restrictions in rules and regulations.

Disabled and stored vehicles are prohibited from being parked on the Condominium. For purposes hereof, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable.

Boats, trailers, jet-skis and trailers for same, panel trucks, buses, trucks with a load capacity of one and one half (1-1/2) ton or more, vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), recreational vehicles (RV's and motor homes), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors other than Sheriff's Marshall's, or police officer's vehicles marked as such, are also prohibited from being parked on the Condominium. Despite the above, trucks, vans, commercial vehicles and vehicles with commercial writings on their exteriors shall be allowed temporarily on the Common Elements during normal business hours for the purpose of serving any Unit or the Common Elements; provided, however, no such vehicle shall remain on the Common Elements overnight or for any purpose unless prior written consent of the Board is first obtained. The length of any vehicle shall not extend more than two feet past the guest parking space.

If any vehicle is parked on any portion of the Condominium in violation of this Paragraph or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed or booted. The notice shall include the name and telephone number of the person or entity that will do the towing or booting and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may

have the vehicle towed or booted in accordance with the notice, without further notice to the vehicle owner or user.

If a vehicle is blocking another vehicle or access to another Owner's Unit or parking space, is obstructing the flow of traffic, is parked on any grassy area, is parked in a parking space which has been assigned as exclusively serving another Unit, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately. If a vehicle is towed or booted in accordance with this subparagraph, neither the Association nor any director, Officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing or booting activity. The Board may elect to impose fines or use other available sanctions rather than exercise its authority to tow or boot.

(i) Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to any portion of the Condominium, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" position and at a minimum temperature setting of fifty-five (55°) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) 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 Association of this failure of the equipment and of the time needed to repair the equipment. The Board may fine any Owner or Occupant up to five hundred (\$500.00) dollars or may cause the water service to the violator's Unit to be discontinued for violation of this subparagraph, in addition to any other remedies of the Association.

(j) Signs. Except as may be provided for herein (including, without limitation, the provisions of Section 11(b) on Compliance with Architectural Standards), or as may be required by legal proceedings, no signs, advertising posters, political placards or billboards of any kind shall be erected, placed, or permitted to remain in the Condominium without the prior written consent required by Section 11 (b), except that each Unit may display two standard security signs outside the Unit, Owners in accordance with Section 11(b). The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association on the Condominium property. Any and all signage shall fully comply with all applicable laws and ordinances, and in no event shall any signage be posted between the sidewalk and the street.

(k) Rubbish, Trash, Recycling and Garbage. All rubbish, trash, recycling or garbage shall be regularly removed from the Unit and shall not be allowed to accumulate therein. All trash receptacles shall be kept covered and closed with lids. No rubbish, trash, recycling or garbage shall be placed on the Common Elements or Limited Common Elements outside the Unit, temporarily or otherwise, except in proper trash receptacles. Rubbish, trash, recycling or garbage shall be disposed of in appropriate sealed bags or other proper receptacles designated by the Board for collection or removed from the Condominium. No such receptacle or rubbish, trash, recycling or garbage shall be placed upon the curb adjacent to the Condominium property more than twelve (12) hours before such items are scheduled to be collected or removed from the Condominium. All receptacles shall be removed within twelve (12) hours of the time upon which rubbish, trash, recycling or garbage was scheduled to be collected or removal from the Condominium.

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

(m) Unightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Condominium. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Unit.

(n) Garage Sales. No garage sale, carport sale, yard sale, flea market, or similar activity shall be conducted in any portion of the Condominium without prior written Board consent. If so permitted, any such activities shall be subject to all reasonable conditions that the Board may impose.

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

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

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

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

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

The Association shall not be liable to the Owner of any Unit or such Owner's Occupant, guest, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements.

13. LEASING.

In order to protect the equity of the individual Unit Owners at Westchester Square, and to carry out the purpose for which the Condominium was formed by preserving the character of the Condominium as a homogeneous residential community of predominantly owner-occupied homes, leasing of Units shall be governed by the restrictions imposed by this Paragraph. Except as provided herein, leasing of Units is prohibited.

(a) Definitions

(i) "Effective Date" means the date this Amendment is recorded in the Fulton County, Georgia, land records.

(ii) "Grandfathered Owner" means an Owner of a Unit who is lawfully leasing his or her Unit on Effective Date. Grandfathering shall apply only to the Unit owned by such Grandfathered Owner on the Effective Date. To qualify as a Grandfathered Owner, the Owner must provide the Board

with a copy of the lease in effect on the Effective Date within sixty (60) days of the Effective Date. Grandfathering hereunder shall continue only until the earlier of: (1) the date the Grandfathered Owner conveys title to the Grandfathered Unit to any other person (other than the Owner's spouse), (2) the date the Grandfathered Owner re-occupies the Unit as his or her primary residence; (3) the date the Grandfathered Owner is shown on the Association's books and records to be more than sixty (60) days past due in any assessment or charge; or (4) the date that the lease that gave rise to the Grandfathered status terminates. Upon any of these events, the Unit shall automatically lose grandfathering hereunder.

(iii) "Grandfathered Unit" means the Unit owned by a Grandfathered Owner on the Effective Date hereof.

(iv) "Leasing" means the regular, exclusive occupancy of a Unit by any Person(s) other than: (1) the Owner of a Unit, or a spouse, parent, child or Domestic Partner of such Owner; (2) an Authorized Entity Occupant as defined below; or a spouse, parent, child or Domestic Partner of such Authorized Entity Occupant; or (3) a roommate of an Owner, or Authorized Entity Occupant, when the Owner, or Authorized Entity Occupant occupies the Unit as his or her primary residence.

(v) "Authorized Entity Occupant" means a greater than 10% Owner, Member or Partner in or of the following: a corporation, a limited liability company, a partnership; or a beneficiary of a greater than 10% beneficial interest in an Owner that is a trust; provided the Owner receives no rent or other consideration for such occupancy.

The name of each Authorized Entity Occupant shall be designated in writing to the Board and may not be changed more frequently than once every 12 months without the Board's written consent. A Person's designation as an Authorized Entity Occupant shall terminate automatically upon the termination of such Person's relationship with the entity holding record title to the Unit.

(b) Leasing Permit and Restriction. No Owner of a Unit may lease his or her Unit unless: (1) the Owner is a Grandfathered Owner, or (2) the Owner is not a Grandfathered Owner but has received a hardship leasing permit from the Board as provided below.

Non-Grandfathered Owners who want to lease their Units may do so only if they have applied for and received from the Board of Directors a "hardship leasing permit." Such a permit will allow an Owner to lease his or her Unit, provided that such leasing is in strict accordance with the terms of the permit and this Section. All hardship leasing permits shall be valid only as to a specific Owner and Unit and shall not be transferable between either Units or Owners (including a subsequent Owner of a Unit where a permit was issued to the Owner's predecessor in title).

Hardship leasing permits are automatically revoked upon the sale or transfer of the Unit to a third party (excluding sales or transfers to an Owner's spouse or Domestic Partner or to an owner of an Entity Member or to a beneficiary of a trust which is an Entity Member). The Board may revoke a hardship leasing permit if there is a violation of the governing legal documents, including the rules and regulations of the Association, or a failure to comply with any of the Condominium Instruments, including failure to pay assessments, by the Owner, the Occupants or their guests or invitees.

If the number of current hardship leasing permits issued and Grandfathered Units as of the Effective Date of this amendment is at three (3) Units, then no additional hardship leasing permits shall be issued until that number falls below three (3) Units. Until there ceases to be any Grandfathered Units, the total number of leased Units (Grandfathered Units and hardship leasing permit Units) shall not exceed three (3) Units. Furthermore, on the date that the Grandfathered Units cease to exist, the total number of hardship leasing permits that shall be allowed to be issued at any time thereafter shall be no more than two (2) Units. Owners who have been denied a hardship leasing permit may reapply after the number of leased Units falls below two (2).

(c) Hardship Leasing Permits. If the Owner will face undue hardship unless he or she is permitted to lease, then he or she may seek to lease by applying to the Board of Directors for a hardship leasing permit. The Board shall have the authority to issue or deny requests for hardship leasing permits in its sole and unfettered discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship, (2) the harm, if any, which will result to the Condominium if the permit is approved, (3) the number of hardship leasing permits which have been issued to other Owners, (4) the Owner's ability to cure the hardship, and (5) whether previous hardship leasing permits have been issued to the Owner. The Board shall not be required to act in any case and may deny any hardship leasing permit application for any reason or for no reason in the Board's sole discretion. No prior issuance of a hardship leasing permit to any other Owner shall be deemed to be any precedent, nor shall it be the basis of any assertion that any other hardship leasing permit application should be or should have been granted. In this regard, it is intended that the Board's decision on any hardship leasing permit is not subject to challenge or suit

Hardship leasing permits shall be valid for a term not to exceed one (1) year. Owners may apply for additional hardship leasing permits at the expiration of a hardship leasing permit, if the circumstances warrant, as determined by the Board in its sole and unfettered discretion.

(d) Leasing Provisions. When leasing is permitted under this Section, it shall be governed by the following provisions:

(i) Notice. At least fourteen (14) days before entering into a lease, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board may, but shall not be required to, review the lease for compliance with the Condominium Instruments and the rules and regulations of the Association. It shall be the duty of the Owner to ensure that (a) the lease and related documents comply with all provisions of the Condominium Instruments and the rules and regulations of the Association and (b) the lessee is aware of all such provisions and rules. Such provisions of the Condominium Instruments and rules and regulations of the Association shall be applicable notwithstanding any conflicting terms of the lease agreement or related documents.

(ii) General. Units may be leased only in their entirety. All leases shall be in writing. There shall be no subleasing of Units or assignment of leases without prior written Board approval. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Unit. The Owner must certify that he or she has provided the lessee with copies of the Condominium Instruments and Association rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's right to approve or disapprove shall be limited to the form of the proposed lease.

(iii) Liability for Assessments; Compliance. Each Owner covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the lessee, by occupancy of the Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(A) Compliance with Declaration, Bylaws, and Rules and Regulations. The Owner and lessee shall comply with all provisions of the Declaration, Bylaws and Association rules and shall control the conduct of all other occupants and guests of the leased Unit in order to ensure such compliance. The Owner shall cause all occupants of his or her Unit to comply with the Declaration, Bylaws and Association rules, and shall be responsible for all violations by such occupants, notwithstanding the fact that such Occupants are fully liable and may be sanctioned for any such violation.

If a Unit is leased or occupied in violation of this Paragraph or if the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, the Association's Board of Directors shall be authorized, in addition to all other available remedies, to levy fines against the lessee and/or the Owner, to suspend all voting and/or

Common Element use privileges of the Owner, Occupants and unauthorized tenant(s) and to suspend all common services to the Unit paid for by the Association as a Common Expense, including water service to the Unit, subject to the provisions of this Declaration and the Bylaws, and to terminate the leasing permit for the Unit.

If a Unit is leased or occupied in violation of this Paragraph, the Association may require the Owner to evict the tenant. If the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, such violation is deemed to be a default under the terms of the lease and shall authorize the Owner or the Association, as more fully described herein, to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The Owner hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. Alternatively, the Association may require the Owner to evict the violating tenant. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees actually incurred and court costs associated with the eviction shall be an assessment and lien against the Unit.

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

(C) Liability for Assessments. When an Owner who is leasing his or her Unit fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(e) Applicability of this Paragraph. Notwithstanding the above, this Paragraph shall not apply to any leasing transaction entered into by the Association. The Association shall be permitted to lease a Unit without first obtaining a permit in accordance with this Paragraph and such Units shall not be considered as being leased in determining the maximum number of Units that may be leased in accordance with this Paragraph.

(f) Association Leasing Costs. To the extent that the Association incurs any costs (including, without limitation, attorney's fees) in connection with the permitting or leasing of a Unit hereunder, the Owner Lessor shall be responsible for reimbursing such costs to the Association. Such amounts shall be specifically and specially assessed against the Unit being leased, shall become and be the personal obligation of the Owner and a lien against the Unit, and shall be collected as provided for herein for collecting assessments.

14. SALE OF UNITS.

A Unit Owner intending to make a transfer or sale of a Unit or any interest in a Unit shall give written notice to the Board of Directors of such intention at least fourteen (14) days before execution of the transfer

or sales documents. The Unit Owner shall furnish to the Board as part of the notice (i) the name and address of the intended grantee; and (ii) such other information as the Board may reasonably require. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

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, as amended, and as required herein. The Association's insurance policy shall cover any of the following types of property contained within a Unit, regardless of ownership: (i) fixtures, improvements and alterations that are part of the building or structure; and (ii) appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping. In the alternative, the Association's insurance policy may exclude improvements and betterments made by the Unit Owner and may exclude the finished surfaces of perimeter and partition walls, floors, and ceilings within the Units (i.e., paint, wallpaper, paneling, other wall covering, tile, carpet and any floor covering), provided, however, floor covering does not mean unfinished hardwood or unfinished parquet flooring.

All insurance purchased by the Association pursuant to this Paragraph shall run to the benefit of the Association, the Board, Officers, all agents and employees of the Association, the Unit Owners and their respective Mortgagees, and all other persons entitled to occupy any Unit as their interests may appear. The Association's insurance policy may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance equals at least the replacement cost of the insured property.

The Board shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs and each Owner shall have the right to obtain additional coverage at his or her own expense.

All insurance coverage for the Association shall be written in the name of the Association as trustee for itself, each of the Owner, and the Mortgagees of Owners, if any. The Board may at least every three (3) years conduct an insurance review to determine if the policy in force is adequate to meet the needs of the Association and to satisfy the requirements of Section 44-3-107 of the Act, as amended, as well as the requirements of this Paragraph 15. Such review may be performed, and shall be deemed reasonably performed, by (i) the Board requesting the Association's insurance agent to verify that insurance policies in existence meet the needs of the Association and satisfy the requirements of Section 44-3-107 of the Act, as amended as well as the requirements of this Paragraph 15 or (ii) the Board soliciting bids for insurance that require bidders to confirm that the insurance being offered meets the needs of the Association and satisfy the requirements of Section 44-3-107 of the Act, as amended, as well as the requirements of this Paragraph 15.

(b) The Board shall utilize reasonable efforts to secure a blanket hazard insurance policy providing "all risk" coverage in an amount equal to full replacement cost, before application of deductibles, of all improvements located on the Condominium. If "all risk" coverage is not reasonably available at reasonable cost, the Board shall obtain, at a minimum, fire and extended coverage, including coverage for vandalism and malicious mischief, in like amounts. The Board shall use reasonable efforts to obtain policies that will provide the following:

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

(ii) any "other insurance" clause contained in the master policy shall expressly exclude individual Unit Owners' policies from its operation;

(iii) until the expiration of thirty (30) days after the insurer gives notice in writing to the Eligible Mortgage Holders 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, or any of their agents, employees, or household members, nor be canceled for nonpayment of premiums;

(iv) the master policy may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days prior notice in writing to the Board and all Eligible Mortgage Holders of Units;

(v) an agreed value endorsement and an inflation guard endorsement and/or full guaranteed replacement cost;

(vi) earthquake coverage, to the extent it is available at reasonable prices and upon reasonable terms, as determined by the Board in its discretion; and

(vii) ordinance or law coverage, demolition cost coverage and increased cost of construction coverage.

(c) All policies of insurance shall be written with a company licensed to do business in the State of Georgia. The company shall provide insurance certificates to each Owner and each Eligible Mortgage Holder upon request.

(d) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(e) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees. Each Unit Owner shall notify the Board of all structural improvements made by the Unit Owner to his or her Unit. Any Unit Owner who obtains an individual insurance policy covering any portion of the Condominium, other than improvements and betterments made by such Owner at his or her expense and personal property belonging to such Owner, shall file a copy of such individual policy or policies with the Board within thirty (30) days after the purchase of such insurance. Such Owner shall also promptly notify, in writing, the Board in the event such policy is cancelled.

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

- i. workers' compensation insurance if and to the extent necessary to meet the requirements of law;
- ii. public liability insurance in amounts no less than required by Section 44-3-107 of the Act, as amended, and officers' and directors' liability insurance in such amounts as the Board may determine and with coverage consistent with Paragraph 3 D of the Bylaws. The public liability insurance shall contain a cross liability endorsement;
- iii. fidelity bonds, if reasonably available, covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds. Such bonds, if reasonably available, shall be in an amount consistent with the best business judgment of the Board of Directors, but in no event less than three (3) months assessments plus a

reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on the implementation of financial controls which take one or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two (2) members of the Board must sign any checks written on the reserve account; and

iv. such other insurance as the Board may determine to be necessary or desirable.

(g) Insurance carried by the Association as a Common Expense shall not be required to include public liability insurance for individual Owners for liability arising within the Unit.

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

(i) Payment of Claims to Delinquent Owners. Despite anything to the contrary herein, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of assessments owed to the Association under Paragraph 9 hereof, the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Unit Owner.

(j) Insurance Deductibles. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one (1) Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected Owner's portion of the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Unit Owner shall be responsible for paying the deductible pertaining to his or her Unit, if any. If any Owner(s) fail to pay the deductible when required under this subparagraph, then the Association may pay the deductible and assess the cost to the Owners pursuant to Paragraph 8 of this Declaration; provided, however, where the deductible is for insurance required under the Act, no Owner shall be assigned more than Two Thousand Five Hundred and No/100 Dollars (\$2,500.00), or such higher amount as authorized by the Act, as the cost of the deductible for any one (1) occurrence.

(k) Increased Insurance Costs Caused by an Owner. If an Owner undertakes any action or is responsible for any condition that causes an identifiable increase in insurance premiums and costs to the Association, such increased costs may be assessed by the Board against the Owner's Unit as a specific special assessment under Paragraph 8. By way of illustration, if a Unit remains unoccupied for any period of time and as a result insurance premiums increase, such amount of increase may be specifically and specially assessed against such Unit.

16. REPAIR AND RECONSTRUCTION.

In the event of damage to or destruction of all or any part of the Condominium as a result of fire or other casualty, unless eighty percent (80%) of the Unit Owners, including the Owner or Owners of any damaged Unit or Units, vote not to proceed with the reconstruction and repair of the structure, the Board of Directors or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each Eligible Mortgage Holder shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Unit Owner with respect to the distribution of proceeds to any such Unit.

(a) Association Repair and Reconstruction.

- (i) Cost Estimates. Immediately after a fire or other casualty causing damage to the Condominium, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Unit) to substantially the condition that existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. If the Association has insured under Paragraph 15 the structure and condition excluding Owner improvements and betterments, such cost estimates shall exclude the costs of restoring such Owner improvements and betterments. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.
- (ii) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to failure of the Association to maintain the minimum coverage as provided in Paragraph 15 of this Declaration, the additional cost shall be a Common Expense. If, for any reason, the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair, as determined by the Board, the additional costs shall be assessed against the Owners of the Unit(s) damaged in proportion to the damage to the Units or against all Owners, in the case of insufficient funds to cover damage to the Common Elements. This assessment shall not be considered a special assessment as discussed in Paragraph 9(e). If there are surplus funds after repair and reconstruction is completed, such funds shall be common funds of the Association to be used as directed by the Board.
- (iii) Floor Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the Floor Plans and specifications under which the Condominium was originally constructed, except where changes are necessary to comply with current applicable building codes or where changes are necessary to substantially match the conditions which existed before such casualty or where improvements not meeting these criteria are approved by the Board of Directors, or, in the case of architectural changes requiring 100% Owner approval, of all of the Owners. To the extent insurance proceeds are available; the Association may reconstruct or repair Owner improvements damaged as a result of fire or other casualty.
- (iv) Encroachments. Encroachments upon or in favor of Units that 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 or the conditions which existed before the casualty. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.
- (v) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Unit

Owners on account of such casualty shall constitute a construction fund, which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Paragraph to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s), and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board of Directors.

(b) Owner Repair and Reconstruction.

- (i) If and to the extent that an Owner is responsible for insuring improvements or other building components (such as approved modifications for which the Owner is required to provide insurance under sub Paragraph 11 (f), such Owner shall rebuild all such insured components which are visible from the exterior of the Unit (a) to the design and condition that existed before the casualty or (b) to the design reflected in the Floor Plans and the original conditions, or (c) to an alternative appropriate design. In all cases the Owner shall have the rebuilding plans and specifications reviewed and approved by the ACC, and in the case of a new design, approved by all Owners, before proceeding with such reconstruction. The Association may stop any construction that is not in accordance with such approved plans and specifications. The costs of such restoration and rebuilding shall be borne by the Owner, with the Owner retaining any insurance proceeds payable under the policies carried by the Owner.
- (ii) If an Owner fails to discharge his or her obligation under sub Paragraph (b)(i) above, the Association may, but is not obligated, to restore and rebuild such improvements and components. In such event, the costs incurred by the Association shall be specifically and specially assessed against such Unit and Owner as provided in Paragraph 8 hereof.

17. EMINENT DOMAIN.

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

18. EASEMENTS.

(a) Easements for Use and Enjoyment. Every Unit Owner and Occupant shall have a right and non-exclusive easement of ingress and egress, use and enjoyment in and to the Common Elements which shall be appurtenant to and shall pass with the title to his or her Unit, subject to the following provisions:

- i. the rights of the Unit Owners to the exclusive use of the Limited Common Elements assigned to their respective Units;
- ii. the right of the Association to have access to the Units and Limited Common Elements assigned to a Unit to discharge its rights and obligations, under the Condominium Instruments, including without limitation, the maintenance responsibility of the Association.

- iii. the right of the Association to charge reasonable fees for the use of any portion of the Common Elements, to limit the number of guests of Unit Owners and tenants who may use the Common Elements, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his or her family, tenants, guests, and invitees;
- iv. the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the Common Elements for any period during which any assessment or charge against his or her Unit which is provided for herein remains unpaid and for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;
- v. the right of the Association to borrow money as may be set forth in the Bylaws; provided, however, any lien and encumbrance of any such mortgage given by the Association as permitted under the Condominium Instruments shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for any Unit or Unit Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Unit. (Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of any Unit or Unit Owner, or the holder of any Mortgage, irrespective of when executed, encumbering any Unit.);
- vi. the right of the Association to grant permits, licenses or easements across the Common Elements, as authorized in this Declaration or the Bylaws;
- vii. the right of the Association to dedicate or transfer all or any portion of the Common Elements as may be expressly permitted in the Condominium Instruments, subject to such conditions as may be agreed to by the members of the Association.

Any Unit Owner may delegate his or her right of use and enjoyment in and to the Common Elements located thereon to the members of his or her family, his or her tenants and guests, and shall be deemed to have made a delegation of all such rights to the Occupants of his or her Unit, if leased.

(b) Easement for Entry. The Association has an easement to enter into Units for maintenance, emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, Officers, agents, employees, managers, and all police officers, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to and reasonable consent by the Owner or Occupant of the Unit. For the purposes of this Paragraph, an emergency justifying immediate entry into a Unit shall include, but not be limited to, the following situations: a water or other utility leak, fire, strong foul odor, obvious insect infestation or sounds indicating that a person or animal might be injured or sick and require immediate medical attention. No one exercising the rights granted in this subparagraph shall be liable for trespass, damages, or in any other manner by virtue of exercising such rights. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a Unit shall exist.

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

(d) Encroachments and Easements. The Units and Common Elements shall be subject to non-exclusive easements of encroachment as set forth in the Act.

(e) Easements for Utilities. To the extent that any utility line, pipe, wire, or conduit serving any Unit, Units or the Common Elements shall lie wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit, Units, or the Common Elements shall be burdened with a non-exclusive easement for the use, maintenance, repair and replacement of such utility line, pipe, wire or conduit, such non-exclusive easement to be in favor of the Unit, Units, or Common Elements served by the same and the Association. It shall be the obligation of the benefited Owner to maintain, replace and repair any pipe, line, conduit, duct or wire owned by such Owner, even if such pipe, line conduit, duct or wire is located within the boundaries of a Unit of another Owner. In such circumstance, the benefited Owner shall repair all incidental damage to any Unit resulting from performance of any such work. All Unit Owners hereby covenant and agree that as finish levels can have varying degrees, such repairs and subsequent cleaning shall be performed on a reasonableness standard, consistent with the Community-Wide Standard. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such persons, firms or corporations of its choice, such duties as are approved by the Board. .

(f) Easements for Pest Control. The Association may but shall not be obligated to dispense chemicals for the extermination of insects and pests within the Units and Common Elements. In the event the Association chooses to provide such pest control, the Association and its duly authorized contractors, representatives, and agents, subject to the consent of each Owner, shall have an easement to enter Units for the purpose of dispensing chemicals for the exterminating of insects and pests within the Units and Common Elements. Unit Owners shall either provide a key to the Unit for purpose of such entry or have someone available at such times as are designated by the Board of Directors to allow entry into the Unit for this purpose. The Association shall not be liable for any illness, damage, or injury caused by the dispensing of these chemicals for this purpose.

(g) Easements for Public in General. The easements and rights created in this Paragraph do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the Fulton County, Georgia records. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Condominium), all or any portion of the Condominium that, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

19. MORTGAGEES' AND OWNERS' RIGHTS.

(a) Unless at least eighty percent (80%) of the first Mortgagees and one hundred percent (100%) of the Unit Owners give their consent, the Association or the membership shall not:

- (i) by act or omission seek to abandon or terminate the Condominium;
- (ii) change the pro rata interest or obligations of any individual Unit for the purpose of (1) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (2) determining the pro rata share of ownership of each Unit in the Common Elements;

(iii) partition or subdivide any Unit in any manner inconsistent with the provisions of this Declaration;

(iv) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (the granting of easements or licenses, for utility and similar services, shall not be deemed a transfer within the meaning of this clause); or

(v) except as may be expressly permitted in the Condominium Instruments, including, without limitation, Paragraphs 15 and 16, use hazard insurance proceeds for losses to any portion of the Condominium (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such portion of the Condominium.

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

(c) Regardless of any conflicting provisions in the Condominium Instrument, the provisions of Paragraph 13 governing leases shall not apply to impair the right of any first Mortgagee to:

(i) foreclose or take title to a Unit pursuant to remedies contained in its Mortgage; or

(ii) take a deed or assignment in lieu of foreclosure; or

(iii) sell or otherwise dispose of a Unit acquired by the Mortgagee.

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

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

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

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

20. AUTHORITY AND ENFORCEMENT.

The Condominium shall be used only for those uses and purposes set out in this Declaration. Every Owner and Occupant shall comply with this Declaration, the Bylaws and rules and regulations of the Association, and any lack of compliance therewith shall entitle the Association and, in an appropriate case, such as inaction on the part of the Association, one or more aggrieved Unit Owners, to take action to enforce the terms of the Declaration, Bylaws or rules and regulations. In addition to any rights the Association may have against an Owner's family, guests, tenants or Occupants, as a result of such person's violation of the Condominium Instruments, the Association may take action under this

Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, guests, tenants or Occupants.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Unit, and to suspend an Owner's right to vote and/or to use the Common Elements for violation of any duty imposed under the Declaration, Bylaws or Association rules. However, nothing herein shall authorize the Association or the Board of Directors to deny ingress and egress to or from a Unit. If any Occupant of a Unit violates the Declaration, Bylaws or Association rules, a fine may be imposed against the Owner and/or Occupant, as set forth below. The failure of the Board to enforce any provision of the Declaration, Bylaws or Association rules shall not be deemed a waiver of the right of the Board to do so thereafter.

In any enforcement action taken by the Association under this Paragraph, to the maximum extent permissible, all costs incurred by the Association in abating a violation or otherwise taking action to enforce the Declaration, Bylaws or Association rules, including reasonable attorney's fees actually incurred, may be assessed against the violating Owner and/or Occupant pursuant to Paragraph 8(b) above.

(a) Fining and Suspension Procedure. The Board shall not impose a fine, suspend the right to vote or suspend the right to use the Common Elements, unless and until the Association has sent or delivered written notice to the violator as provided in subsection (i) below. However, compliance with this subparagraph shall not be required for the following: (a) late charges on delinquent assessments; (b) suspension of voting rights if an Owner is shown on the Association's records to be more than thirty (30) days delinquent in any payment due the Association, in which case suspension of the right to vote shall be automatic; (c) suspension of the right to use the Common Elements if an Owner is shown on the Association's records to be more than thirty (30) days delinquent in any payment due the Association, in which case suspension of the right to use the Common Elements shall be automatic; provided, however, suspension of parking privileges shall require compliance with Paragraph 12(h) above; and (d) suspension of common utility services, which shall require compliance with the provisions of Paragraph 9(c)(iii) above.

(i) Notice. If any provision of the Declaration or Bylaws or any Association rule is violated, the Board shall send the violator written notice identifying the violation and fine(s) and/or suspension(s) being imposed and advising the violator of the right to request a hearing before the Board to contest the violation or the fine(s) and/or suspension(s) or to request reconsideration of the fine(s) and/or suspension(s). Fines and/or suspensions may be effective or commence upon the sending of such notice or such later date specified in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge the fine(s) and/or suspension(s). In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.

(ii) Hearing. If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time. Failure to request a timely hearing as provided herein shall result in loss of the right to challenge and request reconsideration of the fines.

(b) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Board may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking regulations) and/or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity for compliance with the procedure set forth in subparagraph (a) above.

The Association or its duly authorized agent shall have the power to enter a Unit or upon any portion of the Common Elements to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws or the rules and regulations; provided,

however, the violating Owner or Occupant is given at least two (2) days prior written notice requesting that the violation be removed and abated and the property restored to substantially the same condition as existed prior to the structure, thing or condition being placed on the property and causing the violation. Such removal, abatement and restoration shall be accomplished at the violator's sole cost and expense. If the Association exercises its right subject to this subparagraph, all costs of self-help, including but not limited to, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner or Occupant and shall constitute a lien against the Unit. All such amounts shall be collected as an assessment pursuant to this Declaration. Additionally, the Association shall have the authority to record in the Fulton County land records a notice of violation identifying any uncured violation of the Declaration, Bylaws or rules and regulations regarding the Unit.

(c) Failure to Enforce. Notwithstanding the above, no right of action shall exist against the Association for failure of enforcement where: (i) the Board determines that the Association's position is not strong enough to justify taking enforcement action; (ii) a particular violation is not of such a material nature as to be objectionable to a reasonable person or justify the expense and resources to pursue; or (iii) the Owner or party asserting a failure of enforcement possesses an independent right to bring an enforcement action therefore at law or in equity and has failed to do so.

21. AMENDMENTS.

(a) Except where a higher vote is required for action under any other provisions of this Declaration or by the Act, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding sixty six and 2/3 percent (66 2/3%) of the total eligible vote thereof. By way of illustration, a one hundred percent (100%) affirmative vote of all members of the Association is required to amend subparagraph 11 (b)(i) and the second sentence of subparagraph 11 (d). Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and recorded in the Fulton County, Georgia land records.

(b) Except to the extent agreed upon by all Unit Owners, no amendment to this Declaration or the other Condominium Instruments shall change the boundaries of any Unit, the percentage of undivided interest in the Common Elements pertaining thereto, the number of votes in the Association pertaining thereto, or the percentage of undivided interest applicable to a Unit in determining the liability for Common Expenses pertaining thereto. No amendment to this Declaration or the Condominium Instruments shall alter any rights with respect to any Limited Common Element without the consent of all Unit Owners whose use of the Limited Common Element is or may be directly affected by such amendment

(c) No Person shall be permitted to bring any legal action to challenge the validity of an amendment to this Declaration or the Bylaws more than one year after the recording thereof in the Fulton County, Georgia land records.

22. GENERAL PROVISIONS.

(a) SECURITY. THE ASSOCIATION MAY, BUT SHALL NOT BE REQUIRED TO, FROM TIME TO TIME, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SECURITY ON THE CONDOMINIUM; HOWEVER, EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER TENANTS, GUESTS, LICENSEES, AND INVITEES, ACKNOWLEDGES AND AGREES THAT THE ASSOCIATION IS NOT A PROVIDER OF SECURITY AND THE ASSOCIATION SHALL NOT HAVE A DUTY TO PROVIDE SECURITY ON THE CONDOMINIUM. FURTHERMORE, THE ASSOCIATION DOES NOT GUARANTEE THAT NON-UNIT OWNERS AND NON-OCCUPANTS WILL

NOT GAIN ACCESS TO THE PROPERTY AND COMMIT CRIMINAL ACTS ON THE PROPERTY NOR DOES THE ASSOCIATION GUARANTEE THAT CRIMINAL ACTS ON THE PROPERTY WILL NOT BE COMMITTED BY OTHER UNIT OWNERS OR OCCUPANTS. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH UNIT OWNER. THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF MEASURES UNDERTAKEN.

(b) Parking Spaces. The Association shall not be held liable for any loss or damage arising from theft, vandalism, malicious mischief, or any loss or damage resulting from water or acid damage, to any property placed or kept in any parking space in the Condominium. Each Owner or Occupant with use of a parking space or carport who places or keeps a vehicle and/or any personal property in the vehicle, parking space, or carport does so at his or her own risk.

(c) Dispute Resolution. Prior to filing a lawsuit against the Association, the Board, or any Officer, director, committee member, or property manager of the Association:

(i) A Unit Owner or Occupant must request and attend a hearing with the Board of Directors. Any such request shall be in writing and shall be personally delivered to any member of the Board of Directors or the property manager, if any, of the Association. The Owner or Occupant shall, in such request and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) or more than twenty-one (21) days from the date of receipt of the request.

(ii) In the event that the hearing process set forth above fails to reach a resolution of the dispute, a Unit Owner or Occupant must request and participate in a non-binding mediation proceeding in accordance with the Commercial Mediation Rules of the American Arbitration Association then in effect, unless the parties agree otherwise. In accordance with the procedures of the American Arbitration Association, the costs of the mediation shall be borne by the parties equally. However, each party shall pay the parties' own attorney's fees related to any such action. If a mutually agreeable resolution is not reached within sixty (60) days of the commencement of the non-binding mediation procedure, or longer by agreement of the parties or the mediator's order, the parties may resort to litigation. Compliance with this subparagraph (c) shall be a condition precedent to any right of legal action by an Owner or Occupant in a dispute arising hereunder.

(d) No Discrimination. No action shall be taken by the Association or the Board of Directors that would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, sexual orientation, familial status or handicap.

(e) Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

(f) Electronic Records, Notices and Signatures. Notwithstanding any other portion of this Declaration, records, signatures and notices shall not be denied validity or effectiveness hereunder solely on the grounds that they are transmitted, stored, made or presented electronically. The relevant provisions of the Bylaws shall govern the giving of all notices required by this Declaration.

(g) Duration. The covenants and restrictions of this Declaration shall run with and bind the Condominium property perpetually to the extent provided in the Act.

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

(i) Preparer. This Declaration was prepared by Kimberly C. Gaddis, Gaddis, Vath, Lanier, LLC, 3348 Peachtree Road, N.E., Tower Place 200, Suite 700, Atlanta, Georgia, 303026.

IN WITNESS WHEREOF, the undersigned Officers of Westchester Square Condominium Association, Inc., hereby certify that the above amendment to the Amended and Restated Declaration and the following amendment to the Amended and Restated Bylaws were duly adopted by the required majority of the Association and its membership, with any required notices duly given.

This 29th day of June, 2010.

WESTCHESTER SQUARE CONDOMINIUM ASSOCIATION, INC., a Georgia nonprofit corporation

By: [Signature] [SEAL]
President

Attest: [Signature] [SEAL]
Secretary

[CORPORATE SEAL]

Signed, sealed, and delivered this 29th day of June, 2010 in the presence of:

[Signature]
Witness

[Signature]
Notary Public [NOTARY SEAL]

Melissa A. Lozier
Notary Public, Maine
My Commission Expires
August 11, 2013

Signed, sealed, and delivered this 30th day of June, 2010 in the presence of:

[Signature]
Witness

[Signature]
Notary Public [NOTARY SEAL]

NOTARY PUBLIC for the State of Montana
Residing at Livingston, Montana
My Commission Expires 04/01/2011

EXHIBIT "A"**Description Of Submitted Property**

BEGINNING at a point on the northwesterly side of East 15th Street (522.5) feet northeasterly from the intersection of said side of said street with the easterly side of Yonah Drive, as measured along the curvature of said side of East 15th Street; thence north 25 degrees 39 minutes west (260.2) feet to an iron pin; thence south 79 degrees 50 minutes west (34.3) feet to an iron pin at a fence atop a rock retaining wall; thence northwesterly along said fence (125.9) feet; thence north 85 degrees 21 minutes east (94.2) feet to an iron pin; thence south 68 degrees 14 minutes east (102.5) feet; thence north 58 degrees 16 minutes east,(208) feet to the southwesterly side of Lafayette Drive; thence southeasterly, southerly, and southwesterly (581.5) feet along the curvature of the southwesterly, westerly, and northwesterly side of Lafayette Drive and East 15th Street to the point of beginning, known as 238Fifteenth Street, N.E.

Unit Boundaries & Limited Common Elements

The vertical boundaries of each dwelling shall be the exterior of the outside walls of the dwelling as the same may exist upon completion of construction, having the dimensions and location shown on Floor Plans, the plot plans, foundation plans, and elevation drawings identified in Exhibit "B" hereof as the same may be amended by "as-built" certificates hereafter filed in the Office of the Clerk of the Superior Court of Fulton County, Georgia. Where there may be attached to such outside wall a balcony, a stairway, a stoop, landing, steps, projecting cornices and copings, or other portion of the building, serving only the dwelling being bounded, such boundary shall be deemed to include all of such structures and fixtures thereon. However, as respects an interior wall, or walls between dwellings, the vertical boundary of each dwelling shall be fixed at the center line of such walls between dwellings, provided further, that such walls are not to be deemed party walls, but instead are part of the Common Elements as defined elsewhere in this Declaration. They are Limited Common Elements serving only the dwellings affected. The vertical boundaries of each dwelling shall also embrace the garden courtyard or terrace appurtenant to the dwelling as bounded by exterior privacy or garden walls as shown on the architectural exhibits enumerated in Exhibit B. The vertical boundary shall go to the center of such walls as may divide the courtyard of one dwelling from the courtyard of another dwelling.

The horizontal boundaries of dwellings at Westchester Square are unlimited. For the purposes of this Declaration, there shall not be any horizontal boundaries, either up or down, since the dwelling is deemed to extend upward and downward indefinitely to the extent provided by law for real property estates in general.

Additional Limited Common Elements reserved for the exclusive use of dwelling owners, their family, servants, and invitees, are the paved approach to the garage and the lawn space adjacent thereto, which would be embraced by an extension of the sidewalls of each dwelling to the paved driveways shown on the recorded plot plan. The Limited Common Elements, here made appurtenant to the respective dwellings, shall not be altered, diminished, or enlarged by any custom or practice of the owners and their neighbors. Should any Owner cause his property to be surveyed and the Limited Common Element included by demarcation with any stake, pin, or other monument, such stake, pin, or monument shall not be placed, located, altered, or permitted to remain without the continuing approval of the Board of Directors. Limited Common Elements shall not be construed and interpreted to be separate and apart from Common Elements, in general, being limited only with respect to the reserved use thereof to such dwellings.

EXHIBIT "B"**Undivided Percentage Interest In The Common Elements
And Liabilities For Common Expenses**

a)	Westchester Square South		Initial 1966 Assigned Values	Assigned Percentage
	-Dwelling No.	1	\$ 53,100.00	3.45
	- Dwelling No.	2	73,800.00	4.79
	Dwelling No.	3	54,600.00	3.54
	-Dwelling No.	4	73,500.00	4.77
	Dwelling No.	5	55,200.00	3.58
	Dwelling No.	6	72,900.00	4.73
	Dwelling No.	7	75,900.00	4.93

(b)	Westchester Square East		Initial 1966 Assigned Values	Assigned Percentage
	Dwelling No.	8	\$ 75,600.00	4.91
	Dwelling No.	9	71,700.00	4.65
	Dwelling No.	10	54,900.00	3.56
	Dwelling No.	11	73,200.00	4.75
	Dwelling No.	12	74,400.00	4.83

(c)	Westchester Square North		Initial 1966 Assigned Values	Assigned Percentage
	Dwelling No.	13	\$ 75,000.00	4.88
	Dwelling No.	14	55,500.00	3.60
	Dwelling No.	15	72,000.00	4.67
	Dwelling No.	16	56,400.00	3.66

(d)	Westchester Square West		Initial 1966 Assigned Values	Assigned Percentage
	Dwelling No.	17	74,100.00	4.81
	Dwelling No.	18	72,300.00	4.69
	Dwelling No.	19	53,400.00	3.47
	Dwelling No.	20	72,600.00	4.71
	Dwelling No.	21	54,000.00	3.50
	Dwelling No.	22	71,400.00	4.63
	Dwelling No.	23	75,300.00	4.89

Exhibit "B" (continued)

This Schedule identifies the drawings and architectural exhibits which have been filed with the Clerk of the Superior Court of Fulton County, Georgia. They are certified by the architect as accurate copies of portions of the plans and working drawings upon which the City of Atlanta issued its building permit for construction of Westchester Square. The drawings were prepared by Henry D. Norris, A.I.A., and as filed in the office of the Clerk of Superior Court are numbered by the architect as follows:

Sheet 1: a grading plan and plot plan showing the lay-out, dimensions, and boundaries of the tract; the shape, lay-out, and location of buildings, gardens, walkways, driveways, and retaining walls.

Sheet 2: a drawing of front elevations, rear elevations and garden walls of dwellings 1 through 7 comprising Westchester Square South.

Sheet 3: the plan of foundations, ground floors, and gardens of dwellings 1 through 7 comprising Westchester Square South.

Sheet 6: a drawing of front elevations, rear elevations, and garden walls of dwellings 8 through 12 comprising Westchester Square East.

Sheet 7: the plan of foundations, ground floors, and gardens of dwellings 8 through 12 comprising Westchester Square East.

Sheet 10: a drawing of front elevations, rear elevations, and garden walls of dwellings 13 through 16 comprising Westchester Square North.

Sheet 11: the plan of foundations, ground floors, and gardens of dwellings 13 through 16 comprising Westchester Square North.

Sheet 14: a drawing of front elevations, rear elevations, and garden walls of dwellings 17 through 23 comprising Westchester Square West.

Sheet 15: the plan of foundations, ground floors, and gardens of dwellings 17 through 23 comprising Westchester Square West.

Exhibit "C"

Maintenance Responsibility Chart

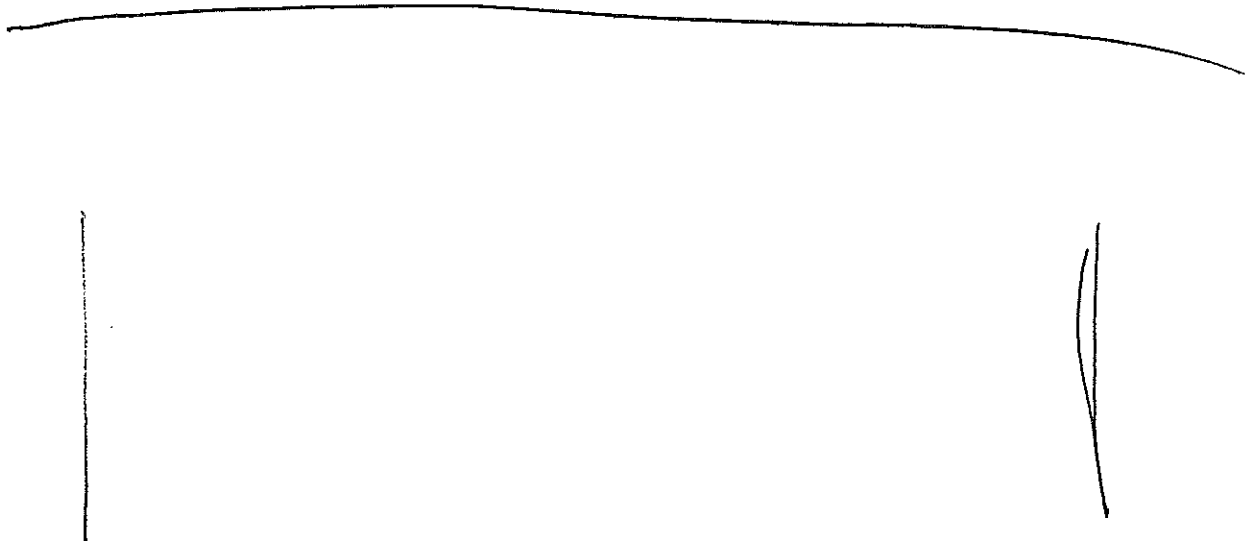


EXHIBIT C MAINTENANCE RESPONSIBILITY CHART		
	ASSOCIATION	HOMEOWNER
1	BALCONIES & RAILINGS	A
2	BRICK & MORTAR EXTERIOR	A
3	CHIMNEY CAP	A
4	DOOR FRAMES/JAMBS & THRESHOLDS	A
5	EXTERIOR DOOR FRAMES	A
6	EXTERIOR ROOF EXHAUST FAN OUTLETS	A
7	EXTERIOR OUTLETS FOR DRYERS OR STOVES	
8	EXTERIOR DOOR HARDWARE & ELECT. APPARATUS (DOORBELLS & REMOTE OPENERS)	O
9	EXTERIOR DOORS - FRONT, FRENCH WINDOWS - MAINTENANCE	O
10	EXTERIOR DOORS - FRONT, FRENCH WINDOWS - REPLACEMENT (1)	
11	EXTERIOR STAIRS AND LANDINGS	O
12	FOUNDATIONS	A
13	FIREPLACES, FLUES, DUCTS, WIRING, CONDUITS	A
14	FIREWALLS	O
15	FIREWALL CROWNS (PARAPET WALLS & CAP/COPING)	A
16	GARAGE DOOR FRAMES - REPLACEMENT	A
17	GARAGE DOORS - REPLACEMENT	A
18	GARBAGE PAILS (IN-GROUND)	A
19	GAS LINES FROM UNIT METER TO INTERIOR OF UNIT SERVING ONLY THAT UNIT	
20	GAS LINES TO UNIT METER FROM GAS COMPANY (GC)	O
21	GUTTERS, GUTTER GUARDS & DOWNSPOUTS	A
22	HVAC (HEATING, VENTILATING, AIR CONDITIONING SYSTEMS AND ALL LINES)	A
23	LANDSCAPING & MAINTENANCE OF AREAS BESIDE HOMES & ADJACENT TO DRIVEWAYS	O
24	LIGHTING (GENERAL ILLUMINATION) EXTERIOR/GROUNDS	A
25	LIGHTING (ENTRY & APPROVED OWNER INSTALLED)	A
26	LINES & PIPES & CONDUITS (WATER & SEWER) WITHIN WALLS OR SLAB SERVING ONLY ONE UNIT	O
27	OUTSIDE FAUCETS THAT SERVE ONLY ONE UNIT	O
28	PAINTING OF ALL EXTERIOR ELEMENTS	A
29	PATIO INTERIOR, INCLUDING PATIO FLOOR, LANDSCAPING & TREES (2)	O
30	PATIO GATES	A
31	PAVEMENT (STONE), ASPHALT & CURBS FOR ENTIRE PROPERTY	A
32	PEST AND RODENT CONTROL INSIDE UNITS	
33	PEST AND RODENT CONTROL OUTSIDE UNITS	O
34	POWER LINES FROM GA POWER POLE TO METER (COMMON AREA LINES)	A
35	POWER LINE FROM METER INTO UNIT SERVING ONLY THAT UNIT	A
36	ROOF	O
37	ROOFING OF BALCONIES & 3RD & 4TH FLOOR DORMERS (SEE WINDOWS SEPARATELY)	A
38	RAILINGS (ON FRONT EXTERIOR STAIRS)	A
39	SATELLITE - INSTALLATION & MAINTENANCE	
40	SCREENS (DOORS & WINDOWS) SERVING ONLY ONE UNIT	O
41	SEWER LINES SERVING MORE THAN ONE UNIT (COMMON ELEMENTS)	O
42	SHUTTERS	A
43	STEPS FROM PATIO TO OUTSIDE	A
44	STORM DOORS AND WINDOWS (EXTERIOR MODIFICATIONS)	A
45	WATER LINES FROM METER TO UNITS (COMMON ELEMENTS)	O
46	WALLS (ALL INTERIOR WALLS, INCLUDING STUD WALLS ADJACENT TO FIREWALLS)	A
47	WALLS (ALL BRICK WALLS SURROUNDING PATIOS)	O
48	WINDOW FRAMES (JAMBS & HARDWARE)	A
49	WINDOW SILLS & HEADERS (EXTERIOR MASONRY)	A
50	WINDOWS: WOOD & GLASS AND/OR METAL & GLASS & SKYLIGHTS - MAINTENANCE	A
51	WINDOWS, INCLUDING ANY EXTERIOR MODIFICATIONS & SKYLIGHTS - REPLACEMENT (1)	O
	(1) WINDOW & DOOR SPECIFICATIONS ARE PUBLISHED IN RULES & REGULATIONS	
	(2) LIST OF RECOMMENDED TREES FOR PATIOS IS PUBLISHED IN RULES & REGULATIONS	