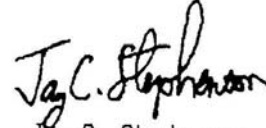


*Declaration of Condominium*

*for*

*Smyrna Market Village Residential  
and  
Commercial Condominium*

Deed Book 13612 Pg 6040  
Filed and Recorded Oct-18-2002 11:03am  
2002-0200433



Jay C. Stephenson  
Clerk of Superior Court Cobb Cty. Ga.

*Wm. H. Dodson II*  
*wait*

RETURN TO:

Ms. Barbara H. Morgan  
McLarty, Robinson & Van Voorhies, LLP  
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Decatur, GA 30030

**DECLARATION OF CONDOMINIUM**

**FOR**

**SMYRNA MARKET VILLAGE**

**RESIDENTIAL AND COMMERCIAL CONDOMINIUM**

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**LIST OF EXHIBITS**

EXHIBIT "A"	DESCRIPTION OF SUBMITTED PROPERTY
EXHIBIT "B"	PERCENTAGE UNDIVIDED INTEREST IN AND TO THE COMMON ELEMENTS
EXHIBIT "C"	BYLAWS
EXHIBIT "D"	DESCRIPTION OF ADDITIONAL PROPERTY

**DECLARATION OF CONDOMINIUM**

**FOR**

**SMYRNA MARKET VILLAGE RESIDENTIAL AND COMMERCIAL  
CONDOMINIUM**

**THIS DECLARATION** is made on the date set forth below by John Wieland Homes and Neighborhoods, Inc., a Georgia corporation (hereinafter referred to as "Declarant");

**W I T N E S S E T H**

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

**WHEREAS**, a plat of survey related to the Condominium prepared by PBS&J, dated September 25, 2002, and last amended on October 2, 2002, was filed in Condominium Plat Book 07, Page(s) 115 , Cobb County, Georgia Records; and

**WHEREAS**, floor plans relating to the Condominium prepared by William C. McIntyre, IV, were filed in Floor Plan Condominium Book 102, Page(s) 12 5-134 of the Cobb County, Georgia Records; and

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

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

1. **NAME.**

The name of the condominium is Smyrna Market Village Residential and Commercial Condominium (hereinafter sometimes called the "Condominium," as further defined herein),

which condominium is a mixed-use condominium hereby submitted to the Georgia Condominium Act, O.C.G.A. Section 44-3-70, et seq. (Michie 1982).

## 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. Section 44-3-70, et seq. (Michie 1982), as may be amended.
- (b) Additional Property means that property described on Exhibit "D", attached hereto and incorporated herein, which may be submitted to the Condominium as provided in this Declaration.
- (c) Architectural Control Committee or ACC means the committee established to exercise the architectural review powers set forth in Section 14.
- (d) Area of Common Responsibility means the Common Elements, together with those areas, if any, which by the terms of this Declaration or by agreement with any other Person become the Association's responsibility.
- (e) Articles or Articles of Incorporation means the Articles of Incorporation of Smyrna Market Village Condominium Association, Inc., which have been filed with the Secretary of State of the State of Georgia.
- (f) Association means Smyrna Market Village Condominium Association, Inc., a Georgia nonprofit corporation, its successors or assigns.
- (g) Board or Board of Directors means the elected body responsible for management and operation of the Association.
- (h) Bylaws means the Bylaws of Smyrna Market Village Condominium Association, Inc., attached hereto as Exhibit "C" and incorporated herein by this reference.
- (i) Commercial Units means Unit C-1 and Unit C-2 or, in the event the owner of Unit C-1 and/or Unit C-2 elects to subdivide Unit C-1 and/or Unit C-2 into two or more smaller Units, the term Commercial Units shall refer to such Units.
- (j) Common Elements mean those portions of the property subject to this Declaration which are not included within the boundaries of a Unit, as more particularly described herein.
- (k) 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 and Area of Common Responsibility.

- (l) 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 and any property described on Exhibit "D" which is later submitted to the provisions of the Act and this Declaration.
- (m) Condominium Installments mean this Declaration and all exhibits hereto, including the Bylaws, and Survey and Floor Plans, all as may be supplemented or amended.
- (n) Declarant shall initially mean and refer to John Wieland Homes and Neighborhoods, Inc. Upon the acquisition of a Commercial Unit by Smyrna Market Village, LLC, or its designee, the term "Declarant" shall mean and refer to John Wieland Homes and Neighborhoods, Inc. and Smyrna Market Village, LLC, and their successors-in-title and assigns, provided that, in an instrument of conveyance to or any other document involving any such successor-in-title or assign, such successor-in-title or assign is designated as "Declarant" hereunder by the grantor/maker of such conveyance or document, which grantor/maker shall be a "Declarant" hereunder at the time of such conveyance or execution of such document; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to the Condominium, there shall be only two Persons (for so long as John Wieland Homes and Neighborhoods, Inc. owns a Residential Unit and Smyrna Market Village, LLC or its designee owns a Commercial Unit and, thereafter there shall be only one Person so entitled) entitled to exercise the rights and powers of "Declarant" hereunder at any one point in time. Except as otherwise provided in this Declaration or the Bylaws, during such period as there shall be more than one Declarant, any act or decision of Declarant (or their affiliates) shall require the written consent or act of both parties comprising "Declarant;" provided, however, nothing contained herein, nor the acts of the Declarants, shall be construed as creating a partnership or joint venture between the Declarants. At such time as John Wieland Homes and Neighborhoods, Inc. no longer owns a Residential Unit, it and any successor-in-title or assign (other than Smyrna Market Village, LLC or its successor-in-title or assign) shall cease to be a Declarant and thereafter the sole Declarant shall be Smyrna Market Village, LLC or its successor-in-title or assign.
- (o) Eligible Mortgage Holder means a holder of a first Mortgage on a Unit, secured by the Unit, who has requested notice of certain matters as set forth herein.
- (p) Floor Plans means any and all floor plans for Smyrna Market Village Condominium filed in the Floor Plan Condominium Book of the Cobb County, Georgia records.

- (q) 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 herein.
- (r) 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.
- (s) Master Association means Smyrna Market Village Association, Inc., a Georgia non-profit corporation, its successors and assigns. Any allocation of charges to individual Units pursuant to the Declaration -of Covenants, Conditions and Restrictions for Smyrna Market Village Association, Inc. shall be made through the Association.
- (t) Master Declaration means the Reciprocal Easement Agreement.
- (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 occupying all or any portion of a Unit for any period of time, regardless of whether such Person is a tenant or the Owner of such property.
- (x) Owner means the record title holder of a Unit, but shall not include a Mortgage Holder.
- (y) Person means any individual, corporation, firm, association, partnership, trust or other legal entity.
- (z) Reciprocal Easement Agreement shall mean that certain Declaration of Covenants, Conditions, Easements and Restrictions for Smyrna Market Village, recorded in Deed Book 13489, Page 5496, et seq., of the Cobb County, Georgia land records, as it may be amended from time to time.
- (aa) Residential Units means Units R-1 through R-16.
- (bb) Survey means any and all plats of survey for Smyrna Market Village Condominium filed in the Condominium Plat Book of the Cobb County, Georgia records.
- (cc) Unit means that portion of the Condominium intended for individual ownership and use, as more particularly described herein and shall include the undivided ownership in the Common Elements assigned to the Unit hereunder. In the event the owner of Units C-1 and/or C-2 elect(s) to divide such Unit(s) into smaller



condominium units (as opposed to merely dividing the space into smaller units), each such smaller condominium unit shall constitute a Commercial Unit.

3. **LOCATION, PROPERTY DESCRIPTION, SURVEY AND FLOOR PLANS.**

The Condominium subject to this Declaration and the Act is more particularly described in Exhibit "A" hereto and incorporated herein by this reference. Survey and Floor Plans relating to the Condominium will be filed in the Cobb County, Georgia land records at the time the Condominium is submitted to this Declaration. Survey and Floor Plans are incorporated herein by reference as fully as if the same were set forth in their entirety herein. So long as a Declarant owns at least one (1) Unit, the Declarant reserves the right, but shall have no obligation, to make improvements and changes to all or part of the Common Elements and each such Declarant (if more than one) shall have the right (but shall have no obligation) to make improvements and changes to the Units owned by such Declarant or its affiliates (other than changes to the location of Unit boundaries unless expressly permitted herein), including, without limitation, addition and realignment of parking spaces, renovation and installation of changes to utility systems and facilities, rearrangement and installation of security and refuse facilities, work relating to building exteriors, and extension of the drives and utility lines and pipes located on the Condominium; provided that John Wieland Homes and Neighborhoods, Inc. shall not have the right to modify any Commercial Unit and Smyrna Market Village, LLC shall not have the right to modify any Residential Unit.

4. **UNITS AND BOUNDARIES.**

The Condominium will be initially divided into eight (8) separate Commercial Units and sixteen (16) Residential Units, the Limited Common Elements and the Common Elements, as shown on the Survey and/or Floor Plans. Each Unit shall consist of either a residential dwelling, a commercial office space or a commercial retail area and its appurtenant percentage of undivided interest in the Common Elements. 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 Survey and Floor Plans. Each Unit includes that part of the structure which lies within the boundaries described in subsections (a), (b) and (c) below, as applicable.

- (a) Vertical Boundaries. The vertical boundaries of each Unit shall be the vertical planes of the unfinished surfaces of the interior walls of the Unit. With respect to common walls between Units, the perimetrical or vertical boundary of the Units served thereby shall be the common wall side of the surface of the sheetrock or other wall material attached to such common wall. The vertical boundaries include the sheet rock on the Unit side of the walls, and they are extended to their intersections with each other and the upper and lower horizontal boundaries of the Unit.
- (b) Horizontal Boundaries (Residential Units). The upper horizontal boundary of each Residential Unit shall be the lower surface of the roof of the building; this includes the attic area of a Unit within the boundaries of the Unit. The lower horizontal boundary of each Unit is the lowermost surface of the exterior unfinished surface of the sub flooring of the Unit, with the flooring and sub flooring constituting part of the Residential Unit.

- (c) Horizontal Boundaries (Commercial Units). The upper horizontal boundary of each Commercial Unit shall be the plane that is three (3) feet below the lowermost surface of the concrete slab that is above such Unit. The lower horizontal boundary of each Unit is the lowermost surface of the exterior unfinished surface of the subflooring of the Unit, with the flooring and sub flooring constituting part of the Commercial Unit.

If any chutes, flues, ducts, conduits, wires, pipes or other apparatus are partially within and partially outside the designated boundaries of a Unit, any portion thereof which serves only that Unit shall be deemed to be a part of that Unit, while all portions thereof which serve more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements. Entry doors and exterior glass surfaces, including, but not limited to, windows and glass doors, serving the Unit shall be included within the boundaries of the Unit. Heating and/or air conditioning systems serving a single Unit (including any part of any such system located outside the boundaries of the Unit), all duct work for such heating and/or air conditioning systems, and appliances and plumbing fixtures within a Unit shall be part of the Unit.

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

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

## 5. COMMON ELEMENTS.

The Common Elements consist of all portions of the Condominium not located within the boundaries of a Unit, which Common Elements include, but are not limited to, certain utilities, fences, paved areas, walls, retaining walls, roofs, roof decks, exterior walls of the building(s), outside parking areas and lighting for same, landscaping and entry features, if any, owned by the Association. Any structural component of a building, even if located within a Unit, shall be Common Elements.

Ownership of the Common Elements shall be by the Owners as tenants-in-common. The percentage of undivided interest in and to the Common Elements attributable to each Unit is set forth in Exhibit "B" attached hereto. Such percentages are based on the relationship of the approximate square footage of each Unit to the approximate total square footage of all Units. Such percentages may be altered only with the consent of all Owners and Mortgagees, or such lesser number as may be prescribed by the Act, expressed in a duly recorded amendment to this Declaration, except as provided in Section 15(b)(iii) and Section 26.

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.**

- (a) General. The Limited Common Elements located on the Condominium and the Units to which they are assigned are:
- (i) any portion of any heating and/or air conditioning system or other utility system (including the duct work from such system) or vent (including all piping in connection with such vent) which serves more than one Unit, but less than all Units, is assigned as a Limited Common Element to the Units so served;
  - (ii) the real property on which there is located any portion of the heating and/or air conditioning system (including the duct work from such system) serving a single Unit is assigned as Limited Common Element to the Unit so served;
  - (iii) any balcony or deck attached to and serving only one (1) Unit is assigned as a Limited Common Element to the Unit to which it is attached and which it serves;
  - (iv) any utility meter which serves only one Unit is assigned as a Limited Common Element to the Unit so served;
  - (v) any utility meter and/or utility meter area serving more than one Unit, but less than all Units, is assigned as Limited Common Elements to the Units so served; and
  - (vi) the mailbox assigned to a Unit is a are Limited Common Element of the Unit to which it is assigned.
- (b) Assignment and Reassignment. The Board, without need for a membership vote, is hereby authorized to assign and reassign Limited Common Elements and to assign Common Elements, not previously assigned, as Limited Common Elements, provided that any such assignment or reassignment shall be made in accordance with the provisions of O.C.G.A. Sections 44-3-82(b) and (c), as modified and supplemented herein. A Common Element not previously assigned as a Limited Common Element may be so assigned by the Board, and a Limited Common Element may be reassigned by the Board, without need for a membership vote, upon written application to the Board by the Owner or Owners requesting the exclusive use of such Common Element, or in the case of a reassignment of a Limited Common Element, upon written application to the Board by the Owner(s) of the Unit(s) to which the Limited Common Element appertains and the Owner(s) of the Unit(s) to which the Limited Common Element is to be reassigned. The Board has the right and authority to approve or disapprove any such application; provided, however, so long as either Declarant

owns at least one (1) Unit, it shall be mandatory that the Board approve any such application upon request made by such Declarant with respect to such Unit. Upon Board approval of the application, an amendment to the Declaration assigning the Common Element as a Limited Common Element or reassigning the Limited Common Element shall be prepared and executed on behalf of the Association, without need for a membership vote, which amendment shall be executed by the Owner or Owners making such application. Such amendment shall be delivered and become effective as provided in O.C.G.A. Section 44-3-82. Assignments and reassignments of Limited Common Elements and assignments of Common Elements other than as provided in this subsection are prohibited.

7. **ASSOCIATION MEMBERSHIP AND ALLOCATION OF VOTES.**

All Owners, by virtue of their ownership of a fee or undivided fee interest in any Unit, excluding Persons holding such interest under a Mortgage, are members of the Association, and, except as otherwise provided herein or in the Bylaws, shall be entitled to vote on all matters upon which Association members are entitled to vote pursuant to the Condominium Instruments. The number of votes shall be thirty two (32), of which sixteen (16) shall be allocated to the initial Residential Units and sixteen (16) shall be allocated to the initial Commercial Units. In the event any of the Additional Property is submitted to the Condominium as contemplated in Section 26 hereof, the Units in the Additional Property shall each receive one (1) vote; provided, however, that if there are both Residential Units and Commercial Units on such Additional Property submitted to the Condominium, then if there are fewer Commercial Units on such Additional Property than Residential Units, such Commercial Units shall receive additional votes such that there are the same number of votes for such Commercial Units as there are for such Residential Units. The votes allocated to all the initial Residential Units shall be allocated to each initial Residential Unit based on the relationship of square footage of each of such Residential Units to the total square footage of all initial Residential Units, as stated on Exhibit "B." The votes allocated to all the Units within the initial Commercial Units shall be allocated to each such Commercial Unit based on the relationship of square footage of each of such Commercial Units to the total square footage of all initial Commercial Units, based on Exhibit "B." The votes of each member shall be exercised as the member determines and advises the Secretary of the Association prior to any meeting. In the absence of such advice, such member's vote shall be suspended if more than one Person seeks to exercise it.

8. **RELATIONSHIP TO MASTER ASSOCIATION.**

The Condominium is located within a planned community which includes the Association and is subject to the Master Declaration and Master Association. In addition to being subject to the terms of this Declaration, each Owner, upon accepting title to a Unit, hereby agrees to be subject to the terms of the Master Declaration and the jurisdiction of the Master Association. Every Unit shall be subject to assessment by the Association for its share of the Master Association common expenses ("Master Association Assessment"). The total amount of the Master Association Assessment shall be budgeted as a Common Expense of the Association and shall be collected by the Association as provided in Section 11 of this Declaration and shall have first priority for payment out of the income of the Association.

9. **ALLOCATION OF LIABILITY FOR COMMON EXPENSES.**

Except as otherwise provided herein, each Unit is hereby allocated liability for Common Expenses apportioned in accordance with the percentage of undivided interest in the Common Elements appurtenant to the Unit, as shown on Exhibit "B" which shall be based on the total square footage of each Unit, including garages, but excluding unenclosed porches and balconies.

- (a) Common Expenses. 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 above allocation of liability for Common Expenses.
- (b) Special Assessment. The Board shall have the power to assess specially pursuant to this subsection and to O.C.G.A. Section 44-3-80 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 do so in the future, including, without limitation, with respect to expenses for which the Board has not previously exercised such power. Fines levied pursuant to this Declaration and/or the Bylaws, fines levied by the Master Association pursuant to the terms of the Master Declaration and/or the Master Association's bylaws and the cost of maintenance performed by the Association for which the Owner is responsible under Section 18 of this Declaration shall be special assessments. The Board may also specially assess Units for the expenses described in subsections (b)(i) and (b)(ii) below.
  - (i) Any Common Expenses benefiting less than all of the Units or significantly disproportionately benefiting all Units may be specially assessed equitably among all of the Units which are benefited according to the benefit received.
  - (ii) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units, or by the Occupant(s), licensees or invitees of any such Unit(s), may be specially assessed against such Unit(s).

For purposes of this subsection, 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.

## 10. ASSOCIATION RIGHTS AND RESTRICTIONS.

In addition to and not in limitation of all other rights it may have, the Association, acting through the Board, shall have the right:

- (a) in accordance with O.C.G.A. Section 44-3-105, and as otherwise provided herein, to enter any portion of the Condominium for maintenance, emergency, security or safety purposes, or otherwise to discharge its powers or responsibilities hereunder, which right may be exercised by the Association's Board, officers, agents, employees or managers; except in an emergency situation, entry into Units shall be only during reasonable hours and after reasonable notice to the Owner or

Occupant; for purposes hereof, 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 an individual or animal might be injured or sick and require immediate medical attention; no one exercising the rights granted in this subsection 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 for any of the above-referenced parties, it being deemed and agreed that no duty to enter a Unit and/or any other portion of the Condominium shall exist;

- (b) to make and to enforce reasonable rules and regulations governing the use of the Condominium, including the Units, Limited Common Elements and Common Elements;
- (c) to enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by the imposition of reasonable monetary fines and suspension of use and voting privileges as provided in O.C.G.A. Section 44-3-76, as amended (which shall not be construed as limiting any other legal means of enforcement);
- (d) to grant permits, licenses, utility easements and other easements, over and through the Common Elements;
- (e) to control, manage, operate, maintain, improve and replace all portions of the Area of Common Responsibility;
- (f) to deal with the Condominium in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of the Act and this Declaration;
- (g) to represent the Owners in dealing with governmental entities with respect to the Area of Common Responsibility;
- (h) to require each Owner to install separate utility meters for each Owner's Unit at the Owner's cost, or to install such meters and assess the costs thereof against each Unit as provided herein;
- (i) to acquire, hold, and dispose of tangible and intangible personal property and real property;
- (j) to approve contractors or subcontractors who have access to the Condominium for the purpose of making repairs, improvements or modifications to Units based on criteria adopted by the Board, which may include, without limitation, insurance requirements, deposits for use of any trash receptacle, if any, and construction deposits to be paid to the Association; costs for repair of damage to the Condominium due to or as a result of such work may be deducted from construction deposits and any additional costs may be specially assessed against the Unit pursuant to Section 9(b);

- (k) at the sole expense of the Association, without need for a membership vote, and without the consent of any affected Owner, to relocate any portion of the air conditioning, heating, plumbing, ventilating, exhaust, electrical or other utility system serving a particular Unit, provided that after such relocation, the system serving the Unit functions at least as well and at no greater cost to the Unit as existed prior to the relocation; and
- (l) to close permanently or temporarily any portion of the Common Elements (except for the Limited Common Elements, any Common Elements the use of which is reasonably necessary for access to or egress from a Unit, any portion of the Common Elements subject to the Reciprocal Easement Agreement, and any portion of the Common Elements over, on or upon which the Declarant or Master Association has an easement) with thirty (30) days prior notice to all Owners, except that in emergency situations requiring a temporary closing, prior notice shall not be required so long as notice is given within three (3) days after the closing explaining the reason for the closing; notwithstanding the above, the Owners may re-open closed Common Elements by a Majority of the total Association vote cast at a duly called special or annual meeting.

11. **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 as may be more specifically authorized by the Board. There shall be no assessments for reserves.
- (b) Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Unit, 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) general special assessments, as provided for in Section 11(e); and (iii) special assessments against any particular Unit, established pursuant to this Declaration, including, but not limited to, reasonable fines imposed hereunder.

All such assessments, together with charges, late charges, interest, costs, reasonable attorney's fees actually incurred and, if the Board so elects, rents in the maximum amount permitted by the Act, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each assessment is made. Such amounts shall also be the personal obligation of the Person who was the Owner of such Unit at the time when the assessment fell due. Each Owner and such Owner's grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board; unless otherwise provided, the annual assessments shall be paid in equal quarterly installments due on the first day of each quarter. No Owner may be exempted 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 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 any installment of annual assessments or any part thereof is not paid in full, or if any other charge is not paid, in either case within ten (10) days of the due date, a late charge equal to the greater of ten 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, and interest at the rate of ten percent (10%) per annum or such higher rate as may be permitted by the Act shall accrue from the due date.
  - (ii) If part payment of assessments and related charges is made, the amount received may be applied first to costs and attorney's fees, then to late charges, then to interest, then to delinquent assessments, and then to current assessments.
  - (iii) If assessments, fines or other charges or any part thereof due from an Owner remain delinquent and unpaid for more than fifteen (15) days from the date due, the Board may accelerate and declare immediately due all of that Owner's or Unit's unpaid assessments, fines or other charges, including, without limitation, installments of the annual assessment and of any special assessment, not less than ten (10) days after the date of written notice to the Owner. Upon acceleration, that Owner shall lose the privilege of paying the annual assessment in installments for that fiscal year.
  - (iv) If assessments, fines and other charges or any part thereof remain unpaid more than thirty (30) days after they become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law, including, without limitation, reasonable attorney's fees actually incurred, and suspend the Owner's and/or Occupant's right to vote and the right to use the Common Elements and the Master Association's common property; provided, however, the Board may not limit pedestrian, medical, fire, police or other health, safety, service or emergency vehicles ingress or egress to or from the Unit, deny the Owner and Occupants ingress to and egress from the Unit, or deny necessary parking of clearly and properly identified handicapped vehicles used by handicapped Owners or Occupants protected by the Fair Housing Amendments Act of 1988. Prior to suspending parking privileges, the Association shall provide the delinquent Owner or Occupant written notice of its intention to do so, sent by certified mail not less than ten (10)



days prior to the date of such suspension. Enforcement under this subsection is not dependent upon or related to other restrictions and/or actions.

- (v) If any assessment, fine 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 is a Common Expense, including, but not limited to, cable television, water, electricity, heat and air conditioning, to that Unit until such time as the delinquent amounts and all costs permitted under this Section, including reasonable attorney's fees, are paid in full. Any costs incurred by the Association in discontinuing and/or reconnecting any utility or service, including reasonable attorney's fees, shall be an assessment against the Unit. Notwithstanding the above, the Board may suspend any utility or service paid for as a Common Expense only if a final judgment or judgments in excess of a total of \$750.00, or such other amount as required by the Act, are obtained in favor of the Association from a court of competent jurisdiction, the Association provides the notice required to be provided by the institutional provider of such utility or service prior to suspension of such utility or 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. Section 16-8-6. 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 provider to restore the utility or service. Enforcement under this subsection is not dependent upon or related to other restrictions and/or other actions, except as provided in this subsection. The foregoing shall not imply that the Association shall have any duty to provide cable television or any other utilities as a Common Expense.
  
- (d) Computation of Operating Budget and Assessment. At least thirty (30) days prior to the beginning of the Associations' fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Condominium during the coming year, which may include a capital contribution or reserve in accordance with a capital budget separately prepared. The Association shall also collect from each Owner its share of any amounts payable to the Master Declaration. The Board shall cause the budget and notice of the assessments to be levied against each Unit for the year (or portion thereof in the case of the initial budget) to be delivered to each member at least thirty (30) days prior to the due date for payment of the assessment (or the first installment thereof). The budget and the assessment shall become effective unless disapproved at a duly called and constituted Association meeting by a vote of a majority of the total Association vote of the Owners of the Residential Units, a majority of the total Association vote of the Owners of the Commercial Units and, so long as the Declarant has the authority to appoint and

remove directors of the Association, the Declarant. Notwithstanding anything to the contrary herein, the part of the Association budget attributable to Master Association Assessments may be disapproved only as provided for in the Master Declaration.

Notwithstanding the foregoing, if the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then until a budget is determined as provided herein, the budget in effect for the current year shall continue for the succeeding year, except that any increase in the assessments levied by the Master Association shall automatically go into effect.

The Board may propose a new budget at any time during the year at a special Association meeting. The proposed budget and assessment shall be delivered to the members at least thirty (30) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to budgets considered at special meetings.

- (e) Special Assessments. In -addition to the annual assessment provided for in Section 11(b), the Board may at any time levy a special assessment against all Owners, notice of which shall be sent to all Owners. Any special assessment which would cause the average total of special assessments levied in one fiscal year to exceed two hundred dollars (\$200.00) per Unit shall be subject to approval by a Majority of the total Association vote prior to becoming effective (except as provided in Section 9(b) regarding the power to assess specially pursuant to O.C.G.A. Section 44-3-80 and Section 13(b) regarding repair or reconstruction of casualty damage to or destruction of all or part of the Condominium).
- (f) Capital Budget and Contribution. The Board may prepare an annual capital budget or evaluation which takes 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 set the required capital contribution, if any, in an amount sufficient to permit meeting the Association's projected capital needs both as to amount and timing by annual assessments over the period of the budget. Any required capital contribution shall be included within the budget and assessment as provided in Section 11(d). Notwithstanding any other provisions of the Condominium Instruments, during the time Declarant has the authority to appoint and remove directors of the Association, Declarant and the Board shall not be required to prepare a capital budget, set a capital contribution, or otherwise collect amounts for capital reserves. The Board shall at all times have the exclusive right to make expenditures from the Association capital reserve account to pay for emergency or unanticipated expenses incurred by the Association or to cure a financial shortfall resulting from inaccurate expense allocation. Such expenditures from the Association capital reserve account shall be made in the Board's sole discretion, and shall not require the approval of the Owners.
- (g) Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or lender considering a loan to be secured by a Unit shall be entitled, upon written request, to a statement from the Association

setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges, against a Unit. The Association shall respond in writing within five (5) days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten dollars (\$10.00) or such higher amount authorized by the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Unit as of the date specified therein.

- (h) Surplus Funds and Common Profits. Pursuant to O.C.G.A. Section 44-3-108, common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining thereafter shall be, at the Board's option, distributed to the Owners, credited to the Owners' next chargeable assessment in proportion to the liability for Common Expenses attributable to each Unit, or added to the Association's capital reserve account.
- (i) Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than either party comprising Declarant or its affiliates, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) of the annual assessment per Unit for that year. This contribution shall be in addition to, not in lieu of, any other assessments levied on the Unit and shall not in any way be construed as part of or identical to any such assessments or as an advance payment of any such assessments. This contribution shall be collected at the closing of the Unit and disbursed to the Association for use in covering operating and other expenses (including reserves) incurred by the Association pursuant to the terms of this Declaration and the Bylaws.
- (j) Master Association Assessment. The Master Association Assessment shall be allocated among all Units as set forth in the Master Declaration (except for specific assessments as provided for in Article IV, Section 5 of the Master Declaration). Notwithstanding the above, the Master Association Assessment shall be a line item in the Association budget and shall be paid to the Master Association and shall have first priority in payment out of the income of the Association. This assessment obligation shall be enforceable by the Master Association against the Association as provided in the Master Declaration. The Association shall pay to the Master Association its share of the Master Association Assessment on such basis as is provided in the Master Declaration. This subsection shall not be amended without the prior written consent of the board of directors of the Master Association.

## 12. INSURANCE.

The Association shall obtain and maintain at all times, as a Common Expense, insurance as required by O.C.G.A. Section 44-3-107, 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: (a) fixtures, improvements and alterations that are a part of the building or structure; and (b) appliances, such as, without limitation, those used for

refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping. The Association's insurance policy may exclude improvements and betterments made by the Owners 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 Section shall run to the benefit of the Association, the Board, officers, all agents and employees of the Association, the 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 Association's insurance shall not include the Owner's personal property unless the Association advises the Owners of such coverage in writing.

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 such Owner's own expense.

All Association insurance coverage shall be written in the name of the Association as trustee for itself, each of the Owners, and the Mortgagees, if any. At least every two (2) years the Board shall conduct an insurance review to verify that the policies in force are adequate to meet the Association's needs and to satisfy O.C.G.A. Section 44-3-107. Such responsibility may be performed, and shall be deemed reasonably performed, by the Board requesting the Association's insurance agent to so verify.

- (a) General. 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, agents and employees;
  - (ii) any "other insurance" clause contained in the master policy shall expressly exclude individual Owners' policies from its operation;
  - (iii) until the expiration of thirty (30) days after the insurer gives notice in writing to the Mortgagee of any Unit, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit, the other 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 Mortgagees of Units;
  - (v) an agreed value endorsement and an inflation guard endorsement; and
  - (vi) the deductible amount per occurrence for coverage required by the Act shall not exceed two thousand dollars (\$2,000.00).
- (b) Company. All policies of insurance shall be written with a company licensed to do business in the State of Georgia. The company shall provide insurance certificates to each Owner and each Mortgagee upon request.
- (c) Losses. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (d) Contribution; Owner Policies. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees. Each Owner shall notify the Board of all structural improvements made by the Owner to such Owner's Unit. Any Owner who obtains an individual insurance policy covering any portion of the Condominium, other than improvements and betterments made by such Owner at such Owner's 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 the Board in writing in the event such policy is canceled.
- (e) Other Insurance. In addition to the insurance required above, the Board shall obtain as a Common Expense:
- (i) worker's compensation insurance if and to the extent necessary to meet the requirements of law;
  - (ii) public liability insurance in amounts no less than required by O.C.G.A. Section 44-3-107, as amended, and officers' and directors' liability insurance in such amounts as the Board may determine; the public liability insurance shall contain a cross liability endorsement;
  - (iii) fidelity bonds or dishonesty insurance, 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 of an amount in the business judgment of the Board, but in no event less than three (3) month's assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided,

however, fidelity coverage may be less than the foregoing 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 such company's 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.
- (f) Exclusions. Insurance carried by the Association as a Common Expense shall not be required to include any part of a Unit which is not depicted on the original Survey or Floor Plans or included in the original mortgage, nor shall the Association include public liability insurance for individual Owners for liability arising within the Unit.
- (g) No Priority for Disbursement. 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.
- (h) Owner Insurance. Every Owner shall be obligated to obtain and maintain at all times insurance covering those portions of such Owner's Unit to the extent not insured by policies maintained by the Association. Upon request by the Board, the Owner shall furnish a copy of such insurance policy or policies to the Association. In the event that any Owner fails to obtain insurance as required hereunder, the Association may purchase such insurance on behalf of the Owner and assess the cost thereof to the Owner and such Owner's Unit, to be collected in the manner provided for collection of assessments under Section 11.
- (i) Insurance Deductibles. In the event of an insured loss, any required deductible shall be paid by the Person or Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected Person's portion of the total cost of repair or otherwise as the Board determines to be equitable. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Owner shall be responsible for paying any deductible pertaining to such Owner's Unit. If any Owner fails to pay the deductible when required hereunder, then the Association may pay the deductible and assess the cost to the Owner and such

Owner's Unit pursuant to Section 9; provided, however, where the deductible is for insurance required under the Act, no Owner shall be assigned more than one thousand dollars (\$1,000.00), or such higher amount as authorized by the Act, as the cost of the deductible for any one occurrence.

- (j) Payment of Claims to Delinquent Owners. Notwithstanding 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 any payment owed to the Association, including, without limitation; any assessment under Section 11, 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 Owner.

### 13. **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 Owners representing at least eighty percent (80%) of the total Association vote of the owners of the Commercial Units and eighty percent (80%) of the total Association vote of the owners of the Residential Units, including the Owner(s) of any damaged Unit(s), elect not to proceed with the reconstruction and repair of the structure, the Board or its agent shall arrange for and supervise the prompt repair and restoration of the structure. In the event of substantial damage or destruction, each institutional holder of a first Mortgage shall be entitled to written notice of the damage, and nothing in the Condominium Instruments shall be construed to afford a priority to any Owner with respect to the distribution of proceeds to any Unit.

- (a) Cost Estimates. Promptly after a fire or other casualty causing damage to the Condominium, the Board shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Unit) to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board determines to be necessary.
- (b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the additional costs shall be assessed against the Unit(s) damaged in proportion to the damage to such Unit(s) or against all Units, 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 Section 11(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.
- (c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Condominium

was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board. To the extent insurance proceeds are available, the Association may reconstruct or repair Owner improvements damaged as a result of fire or other casualty.

- (d) Encroachments. Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Condominium was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.
- (e) Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments on account, of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair as set forth in this Section, 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.

#### 14. ARCHITECTURAL CONTROLS.

- (a) Architectural Standards. Except as provided herein, no Owner, Occupant, or any other Person (including, without limitation, the Association) may make any encroachment onto the Common Elements or Limited Common Elements, or make any exterior or interior change, alteration, or construction in or to a Unit (including painting, utility work and/or alteration, installation of alarms and/or alarm systems, and landscaping), nor erect, place or post any object, sign, clothesline, speaker, playground equipment, antenna, light, storm door or window, door knob or knocker, artificial vegetation, exterior sculpture, fountains, flags, or thing on the exterior of the buildings (except for reasonable seasonal decorations displayed in only windows between Thanksgiving and January 15), in any windows of the Units (except window treatments as provided herein), on any Limited Common Elements or on any other Common Elements, without first obtaining the prior written approval of the Architectural Control Committee (ACC) and no plastic furniture shall be permitted on any porch, deck or balcony of any Residential Unit. The foregoing restrictions shall not apply to the Commercial Units or any Limited Common Area under the control of the Owner of any Commercial Unit (e.g., any sidewalk area in front of any Commercial Unit). In addition to approval by the ACC, any and all of the foregoing shall be subject to prior written approval by the Master Association, as provided in the Master Declaration. Any application vetoed or disapproved by the Master Association shall be disapproved by the ACC, Board and Association. The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing buildings, Units and structures, and the location in relation to surrounding structures and topography. Notwithstanding the foregoing, neither



Declarant and no affiliate of either Declarant shall be required to obtain any consent pursuant to this Section, subject to Section 2(n).

Applications for approval of any such modification or addition shall be in writing and shall provide such information as the ACC or Master Association may reasonably require. The Master Association (to the extent of its approval rights) and the ACC or its designated representative shall be the sole arbiters of such application and each may withhold approval for any reason, including purely aesthetic considerations, and each shall be entitled to stop any construction which is not in conformance with approved plans. Pursuant to the terms of Article X of the Master Declaration, any application for additions or alterations approved by the ACC shall be immediately forwarded to the Master Association's architectural control authority for review as provided in the Master Declaration. If an application is vetoed by the Master Association, the notice to the Owner shall so state and shall set forth any appeal rights that may be provided. The Board or ACC may publish written architectural standards for exterior, interior and Common Element alterations or additions.

Any such architectural standards shall be submitted to, and shall be subject to prior written approval by, the Master Association architectural control authority.

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

- (b) Architectural Control Committee. The ACC shall constitute a standing committee of the Association and shall consist of the Board unless the Board delegates to other Owners the authority to serve on the ACC, but in all events the owners of the Commercial Units shall have the same number of members on the ACC as the owners of the Residential Units. The chairperson of the ACC shall be a Board member.
- (c) Condition of Approval. As a condition of approval for requested construction, change, addition, or alteration, an Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance of such construction, change, modification, addition, or alteration. It is the responsibility of each Owner to determine on such Owner's own behalf what modifications have been made to such Owner's Unit by any predecessor-in-interest. In the discretion of the ACC and the Master Association, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner. The ACC and the Master Association also may establish such other conditions of approval

as each may determine necessary or appropriate, including reasonable construction commencement and completion times.

- (d) Limitation of Liability. Review and approval of any application hereunder may be made on any basis, including solely the basis of aesthetic considerations. The Board, the ACC, their respective members, and the Association, the Master Association, the Declarant and its (their; affiliates, and their respective officers, directors, employees and agents, shall not bear any responsibility for ensuring the design quality, structural integrity or soundness, of approved construction or modifications, or for ensuring compliance with building codes, zoning regulations and other governmental requirements. The Board, the ACC, their respective members, and the Association and the Master Association, the Declarant and its (their) affiliates, and their respective officers, directors, employees and agents, shall not be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Unit.
- (e) No Waiver of Future Approvals. Each Owner acknowledges that the Board, ACC members and representatives of the Master Association will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. Each Owner further acknowledges that different architectural and other standards may be adopted and/or applied for different parts of the Condominium, based on street visibility, location of proposed modification in a building, or other criteria reasonably determined. Approval hereunder shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.
- (f) Enforcement. Any construction, alteration, or other work done in violation of this Section shall be deemed to be nonconforming. Upon written request from the Board, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to do so, the Board shall have the right to enter the property and do so. All costs thereof, including, without limitation, reasonable attorney's fees, shall be chargeable to, and collectable from, such Owner and/or shall be an assessment and lien against such Owner's Unit, collectable in the manner provided under Section 11 for the collection of assessments.

In addition, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines for violation of this Section. The Board, on behalf of the Association, may pursue all legal and equitable remedies available to enforce the provisions of this Section and decisions made pursuant thereto. Furthermore, the Board shall have the authority to record, in the land records of the county in which the Condominium is located, notices of violation of the provisions of this Section.

If any Owner or Occupant makes any change, alteration, or construction (including landscaping) upon the Common Elements or Limited Common

Elements in violation hereof, such Owner or Occupant does so at such Owner's or Occupant's sole risk and expense, and subject to possible removal by the Board or Master Association at any time. However, if the change, alteration or construction is permitted to remain on the Common Elements or Limited Common Elements, it shall so remain without reimbursement to the Owner or Occupant for any expense such Owner or Occupant may have incurred in making the change, alteration or construction.

Any and all rights and powers vested in the Master Association under this Section may be exercised by and through the Master Association's board of directors, on behalf of the Master Association.

- (g) Commencement and Completion of Construction. All changes, modifications and improvements approved hereunder must be commenced within one hundred eighty (180) days from the date of approval. If such work is not commenced within such time period, then such approval shall be deemed revoked, unless the ACC (with prior approval from the Master Association) 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 (with prior approval from the Master Association). 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.

15. **USE RESTRICTIONS.**

Each Owner shall be responsible for ensuring that the Owner's family, employees, guests, tenants and Occupants comply with all provisions of the Condominium Instruments and the Association's rules and regulations, as well as with the Master Declaration and the bylaws and rules and regulations of the Master 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 or Master Association may have against the Owner's family, employees, guests, tenants or Occupants, as a result of such person's violation of the Condominium Instruments, the Master Declaration or the bylaws and rules and regulations of the Association or Master Association, the Master Association may take action hereunder against the Owner as if the Owner committed the violation in conjunction with the Owner's family, employees, guests, tenants or Occupants.

In addition to the following use restrictions, the Board may adopt reasonable rules and regulations in accordance with the terms hereof, and of the Bylaws and the Master Declaration with respect to the Residential Units.

- (a) Use of Units.
  - (i) Residential Units 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:

- (aa) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the Unit;
- (bb) 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 Unit without business activity;
- (cc) the business activity is legal and conforms to all zoning requirements for the Condominium;
- (dd) the business activity does not unreasonably increase traffic in the Condominium (other than by a reasonable number of deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);
- (ee) the business activity does not increase the insurance premium paid by the Association or Master Association or otherwise negatively affect the Association's or Master Association's ability to obtain insurance coverage;
- (ff) 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
- (gg) the business activity does not result in a materially greater use of Common Elements or Association and/or Master Association facilities or 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: (1) such activity is engaged in full- or part-time; (2) such activity is intended to or does generate a profit; or (3) 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 or Master Association shall not be considered a trade or business within the meaning of this subsection. The Board shall have the sole discretion to determine what, if anything, is unreasonable about a particular business activity.

This subsection shall not apply to activities of the Association or Master Association. Leasing of a Unit shall not be considered a trade, business or business activity.

The maximum number of individuals occupying a Residential Unit shall be limited to two (2) people per bedroom in the Unit (as such bedrooms are depicted on the original Survey and Floor Plans). "Occupancy," for purposes hereof, shall be defined as staying overnight in a Residential Unit for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year. Upon written application, the Board may grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto.

If an Owner is a corporation, partnership, limited liability company, trust or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the individual(s) who will occupy the Residential Unit. The designated individual(s) to occupy the Residential Unit may not be changed more frequently than once every six (6) months.

- (ii) Commercial Units may be used for retail, office, professional, business and commercial purposes, as permitted by applicable zoning ordinances and regulations applicable to the Condominium.
- (b) 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) Alterations to the Interiors of the Units. No Owner or Occupant may make any alteration which involves connecting to Common Element pipes, lines, conduits and/or other apparatus for access to common utilities without prior written Board approval (including, without limitation, installation of washers and dryers); provided that any such line which enters any Commercial Unit may be divided or connected to in connection with any use in a Commercial Unit, including, without limitation, the subdivision thereof. No Owner or Occupant shall make any modifications (interior or exterior) to, or place an excessive load on, any structural or load bearing portions of a Unit or building without prior written Board approval. Such approval shall not be granted by the Board unless the Owner has presented to the Board a report or drawing prepared by a licensed structural engineer showing that compensating measures will be taken to ensure the structural integrity of the Unit, the building and the Condominium. All building code requirements must be complied with by the Owner or Occupant and necessary permits and approvals secured by the Owner or Occupant for any modifications. Notwithstanding the above, an Owner desiring to make any modifications or alterations to a Unit,

regardless of whether such Owner believes that such modifications will affect the Common Elements or structure or load bearing portions of a Unit or building, must make application to the Board in order for the Board to make the determination of whether the Board's approval is required.

In accordance with O.C.G.A. Section 44-3-90, to the extent a Unit or Units are subdivided in accordance with this Declaration and the Act and the Owner of a Unit or Units acquires an adjoining Unit, such Owner shall have the right (subject to the prior written approval of the Mortgagees of the Units involved) to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may, in whole or part, be part of the Common Elements, so long as (aa) no portion of any structural or load bearing wall, column or other portion of the building or Unit(s) is materially weakened or removed, (bb) the Board has approved plans for the foregoing, and (cc) no portion of any Common Elements is damaged, destroyed or endangered, other than that partition and any chutes, flues, ducts, conduits, wires or other apparatus contained therein, which shall be relocated by such Owner if such facilities serve any other part of the Condominium. The alterations permitted by this subsection shall not be deemed an alteration or relocation of boundaries between adjoining Units and will not change percentage interest in and to the Common Elements and the allocation of votes and Common Expenses.

- (ii) Relocation of Boundaries. Boundaries between adjoining Units may be relocated only in strict accordance with the provisions of O.C.G.A. Section 44-3-91 and this Declaration and, for so long as a Declarant owns at least one (1) Unit, only with the prior written consent of the Declarant. A Declarant shall have the right to relocate boundaries between Units owned by such Declarant or its affiliates without the approval of the Association, the Board, the ACC or any other Person or group, and the Board shall take such steps as may be necessary to have the required amendment(s) to the Declaration executed on behalf of itself and the Association, if and as necessary.
  
- (iii) Subdivision of Units.
  - (aa) Residential Units. No Residential Unit shall be subdivided into a smaller Unit or Units. Notwithstanding anything to the contrary contained herein, each Declarant shall have the right to subdivide a Unit or Units owned by such Declarant or its affiliates without the approval of the Association, the Board, the ACC or any other Person or group, and the Board shall take such steps as may be necessary to have the required amendment(s) to the Declaration executed on behalf of itself and the Association, if and as necessary.

(bb) Commercial Units, An Owner may subdivide a Commercial Unit only in strict accordance with the provisions of O.C.G.A. Section 44-3-92 and this Declaration. Notwithstanding the foregoing, a Commercial Unit may be subdivided by the Owner thereof into two (2) or more separate Commercial Units provided that any such subdivision of a Commercial Unit results in a new Commercial Unit being created which contains not less than seven hundred fifty (750) square feet of space. The Common Elements affected by such subdivision may be located or relocated as required to effect such subdivision, provided that such subdivision is made in compliance with the Act and the following provisions. No rights and obligations with respect to any Commercial Unit shall be affected, no percentage of ownership in the Common Elements shall be reallocated, and no such subdivision shall be effective, unless the same is expressly provided for and made in compliance with the requirements of this subsection and the Act.

- (i) The Owner desiring to make such subdivision shall make written application to the Board requesting an amendment to this Declaration (including Survey and Floor Plans), which application shall (i) contain a survey and floor plans of the proposed alterations of the affected Commercial Unit or Commercial Units and the affected Common Elements, assigning identifying numbers to any Commercial Unit created by subdivision; (ii) set forth the proposed reallocation (among the new Commercial Units to be created by any proposed subdivision or transfer) of the percentage of interest in the Common Elements appurtenant to the affected Commercial Unit or Commercial Units; and (iii) set forth whether the Limited Common Elements serving the affected Commercial Unit or Commercial Units are to be assigned to each new Commercial Unit or to fewer than all of the new Commercial Units to be created by the proposed subdivision or transfer.
- (ii) No proposed subdivision of a Commercial Unit or Commercial Units shall be effective unless the structural alterations are first approved in writing, by all holders of the Mortgages on the affected Commercial Unit or Commercial Units. If so approved by such Mortgagees, such proposed subdivision shall be effective upon the preparation by the Association of, and the recording of, an amendment to this Declaration, consistent with and reflecting such subdivision, executed by the Association (by and through the Board), the Owner or Owners of the Commercial Units involved therein and all holders of

Mortgages on such Commercial Units, together with an amended Survey and Floor Plans as necessary, approved in accordance with the Act The Association shall cooperate in effecting such subdivision and the Board shall take such steps as may be necessary to have the required amendment(s) to the Declaration executed on behalf of itself and the Association, if and as necessary Any expenses incurred in connection with the accomplishing of any subdivision of Commercial Units as provided hereunder, including, without limitation, attorneys' fees, shall be paid by the Owner(s) of the Commercial Units involved prior to the Association's execution of the amendment, and such Owner(s) shall be jointly and severally liable for the payment thereof

- (c) Outbuildings. No structure of a temporary character, such as, without limitation, trailers, tents, shacks, carports, garage, barn or other outbuilding, shall be erected on any portion of the Condominium at any time without prior written Board approval, other than such as is erected by Declarant or its affiliates.
- (d) Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Elements, without prior written Board consent, except as specifically provided herein. There shall be no use of the roofs of the Condominium buildings by the Owners, or by their family members, employees, guests, tenants, invitees, agents and contractors, or by anyone else. The Association and its agents and contractors shall have access to the roofs for performing the Association's maintenance and repair responsibility, and otherwise as determined by the Board. There shall be no gardening or landscaping on the Common Elements without prior written Board consent. This subsection shall not apply to the Declarant or its affiliates, subject to Section 2(n), so long as the Declarant or its affiliates shall own at least one (1) Unit which has never been sold (other than the initial sale of the Commercial Units to Smyrna Market Village, LLC or its designee which is designated by written instrument as a Declarant hereunder).
- (e) Use of Limited Common Elements. Use of the Limited Common Elements is restricted exclusively to the Owner(s) of the Unit(s) to which such Limited Common Elements are assigned, and said Owner's family members, employees, guests, tenants and invitees. The Limited Common Elements are reserved for exclusive use, but shall not be construed or interpreted to be separate and apart from the Common Elements in general, and the restrictions applicable to the Common Elements shall also apply to the Limited Common Elements.
- (f) Prohibition of Damage, Nuisance and Noise. Without prior written consent of the affected party, nothing shall be done or kept on the Condominium which would increase the rate of insurance for the Association, the Master Association or any Unit, which would be in violation of any statute, rule, ordinance, regulation,



permit or other governmental requirements, or which would increase the Common Expenses or expenses of the Master Association.

It is the nature of multi-family properties (of which the Condominium is a part) that dwelling Units are built in close proximity to one another (resulting in sharing of common walls, floors and ceilings) and that noise is frequently audible from one Unit to the next no matter how much sound proofing is attempted. It is therefore mandatory, for the mutual interest and protection of all Owners, lessees and other Occupants within the Condominium, to recognize that acoustical privacy is achieved only through understanding and compliance with certain limitations and restrictions. It is recognized that sound insulation from an adjacent occupancy in a manner comparable to a detached single-family residence is impossible to attain, and Owners and Occupants hereby acknowledge and accept that limitation. Owners and Occupants acknowledge that there will usually be some audio awareness of one's neighbors, depending upon the situation. Modification of design of the structures, or related components thereof, by Owners and Occupants could alter sound insulation. Accordingly, all such modifications are regulated by this Declaration, and the Owners and Occupants should review the Declaration for further information with respect to sound attenuation. Additionally, all furniture parts in contact with the floor should have rubber castors or felt pads to minimize noise and vibration attributable to moving furniture.

Noxious, destructive or offensive activity shall not be carried on within the Condominium. No Owner or Occupant of a Unit may use or allow the use of the Unit or any portion of the Condominium at any time, in any way or for any purpose which may endanger the health of, or unreasonably annoy, disturb or cause embarrassment or discomfort to, other Owners or Occupants, or which constitutes, in the sole opinion of the Board, a nuisance. In addition, no Owner or Occupant of a Unit may use or allow the use of the Unit or the Common Elements in any manner which creates disturbing noises, including, without limitation, use of stereo speakers or equipment that will, in the sole discretion of the Board, interfere with the rights, comfort or convenience of the other Owners or Occupants. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with such Owner's property or personal rights.

It is expressly acknowledged that the operation of a restaurant, coffee shop or other food or beverage establishment shall not constitute a violation of this subsection (f).

All Owners and Occupants acknowledge and understand that the Declarant and others under Declarant's direction or consent will be constructing certain portions of the Condominium and adjacent areas that are not part of the Condominium and no such construction or noise associated therewith shall be deemed a nuisance or discomfort pursuant to the terms hereof.

No Owner, Occupant or agent of such Owner or Occupant shall do any work which, in the reasonable opinion of the Board, 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 real property thereto, without in every such case the unanimous, prior written consent of all members of the Association and their Mortgagees.

No damage to or waste of the Common Elements, or any part thereof, shall be permitted by any Owner or member of such Owner's family or any invitee of any Owner. Each Owner shall indemnify and hold harmless the Association, the other Owners, the Declarant and its (their) affiliates, and the Master Association, and the directors, officers, employees and agents of each of the foregoing, from and against any and all loss to any such Person resulting from any such damage or waste caused by such Owner, members of such Owner's family or employees, such Owner's or family members' guests and invitees, or Occupants of such Owner's Unit.

- (g) Firearms and Fireworks. The display or discharge of firearms or fireworks within the Condominium is prohibited; provided, however, that the display of lawful firearms is permitted by law enforcement officers and also is permitted for the limited purpose of transporting firearms to or from a 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. Section 25-10-1, as amended.
- (h) Animals. No Owner or Occupant may keep animals, other than a reasonable number of generally recognized household pets, on any portion of the Condominium, all as determined in the discretion of the Board. No Owner or Occupant may keep, breed or maintain any animal for any commercial purpose. No structure for the care, housing, or confinement of any animal shall be constructed or maintained on any part of the Common Elements, including Limited Common Elements, without prior written ACC approval (and in accordance with Section 14). Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors, except that dogs need not be leashed within an enclosed balcony or deck when attended by a person. Any animal feces left upon the Common Elements must be removed immediately by the owner of the animal or the person responsible for the animal.

No potbellied pigs, venomous snakes, pit bulldogs, rottweillers, doberman pinchers, 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 animal 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 do so, the Board may remove the animal. Any animal which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any Person may be removed by the Board without prior notice to the animal's owner.

Any Owner or Occupant who keeps or maintains any animal upon the Condominium shall be deemed to have agreed to indemnify and hold harmless the Association, the Declarant and its (their) affiliates, and the Master Association and the directors, officers, employees and agents of each of the foregoing, from and against any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such animal within the Condominium.

- (i) Parking. The garage assigned to a Unit as a Limited Common Element may be used only by the Owner or Occupant of the Unit to which such garage is assigned, and their guests and family. Unless and except to the extent that the Occupants of a Unit have more vehicles than the number of garage spaces serving the Unit, all vehicles shall be parked within such garage. Vehicles may be parked other than in the garage serving a Unit only after all of the garage spaces serving the Unit have vehicles parked in them. Garages are for the parking of vehicles only, and no other storage or activity may occur in a garage without prior written Board consent. No Owner or Occupant may keep or bring onto the Condominium more than a reasonable number of vehicles per Unit at any time, as determined by the Board. The Board may adopt reasonable rules limiting the number of vehicles which may be parked at the Condominium. Vehicles may be parked only in designated parking spaces or other areas authorized in writing by the Board. Parking spaces may be, but are not required to be, assigned as Limited Common Elements. The parking areas surrounding the Condominium Property are not owned by the Condominium and the rights of the Board are limited to such rights, if any, that the Condominium may have with respect to such property.

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. A vehicle shall be considered "stored" if it remains on the Condominium for fourteen (14) consecutive days or longer without prior written Board permission (the intent of this provision is that vehicles not be stored on the Condominium, and the temporary removal of a vehicle to break the continuity of the fourteen (14) day period shall not be sufficient to establish compliance with this restriction).

Boats, trailers, panel trucks, buses, trucks with a load capacity of one (1) ton or more, vans (excluding mini-vans or utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), recreational vehicles (RVs and motor homes), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors are also prohibited from being parked on the Condominium except in areas designated by the Board as parking areas for particular types of vehicles. Notwithstanding 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, but no such vehicle shall remain on the Common Elements overnight or for any purpose, except serving a Unit or the Common Elements, without prior written Board consent.

If any vehicle is parked on any portion of the Condominium in violation hereof or in violation of the Association's rules, 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. The notice shall include the name and telephone number of an individual to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Condominium stating the name and telephone number of the Person which will do the towing. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to a Unit or parking space, is obstructing the flow of traffic, is parked on any grassy area, is parked in a space which has been assigned as exclusively serving another Unit, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this subsection, none of Declarant, its (their) affiliates, the Association, the Master Association and any director, officer, employee or agent of any of the foregoing, shall be liable to any Person for any claim of damage as a result of the towing activity. The Association's right to tow is in addition to, and not in limitation of, all other rights of the Association, including the right to assess fines. The Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

- (j) Abandoned Personal Property. Personal property, other than vehicles as provided for in Section 15(i), is prohibited from being stored, kept, or allowed to remain for more than twenty-four (24) hours upon any portion of the Common Elements, 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, or the on the door of each Unit, the Board may remove and either discard or store the personal property in a location which the Board may determine, and the Board shall have no obligation to return or replace such property or reimburse the owner of the property. The notice shall include the name and telephone number of the Person which will remove the property and the name and telephone number of an individual 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.

The Declarant, its (their) affiliates, the Association, the Master Association and any director, officer, employee or agent of any of the foregoing, shall not 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.

- (k) Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to 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 degrees (55°) Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two degrees (32°) Fahrenheit or below. Owners and Occupants 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. If during the months specified above the heating equipment is not working properly, the Owner or Occupant shall immediately inform the Board of this failure of the equipment and of the time needed to repair the equipment. The Board may fine any Owner or Occupant and/or cause the water service to the violator's Unit to be discontinued for violation hereof, in addition to any other remedies of the Association.
- (l) Signs. Except as may be provided for herein, required by legal proceedings, or erected by Declarant and its (their) affiliates in their sole discretion, no signs, advertising posters, political placards or billboards of any kind shall be erected, placed, or permitted to remain on the Condominium without the prior written consent of the Board or its designee. One (1) professional security sign not to exceed six inches (6") by six inches (6") in size may be displayed from within a Unit, and one (1) professionally lettered "For Rent" or "For Sale" sign not to exceed two feet (2') by two feet (21) in size may be displayed from within a Unit being offered for sale or for lease, but only if the content of the sign and anything else attached to, associated with or in the vicinity of the sign states or conveys only that the Unit is for sale or for rent and the name and telephone number of the Person to contact for additional information. Any other type of "For Sale" or "For Rent" sign shall not be permitted within the Condominium. The Board also shall have the authority to adopt regulations permitting temporary signs on the front door of a Residential Unit announcing births, birthdays or other events for limited periods of time. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association.
- (m) Antennas and Satellite Dishes. Except as provided below, 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. The following shall apply to all Units and Owners:

- (i) No transmission antenna, of any kind, may be erected anywhere on the Condominium, including the Units, without prior approval pursuant to Section 14.
- (ii) No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one (1) meter in diameter shall be placed, allowed or maintained upon the Condominium, including the Units and the Limited Common Elements.
- (iii) DBS and MMDS satellite dishes or antennas one (1) meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association (pursuant to Section 14), both as may be amended from time to time.

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 dishes or antennas.

The Board and Declarant (and its affiliates) reserve the right to (but shall not be obligated to) erect any type and size of master antenna, satellite dish or other similar master system for the benefit of the Condominium. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an individual outdoor antenna or similar device would be the most cost-effective way to receive the signals sought to be received.

- (n) Rubbish, Trash and Garbage. All rubbish, trash and garbage shall be regularly removed from Units and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Elements or Limited Common Elements outside Units, temporarily or otherwise, except in trash dumpsters. Rubbish, trash and garbage shall be disposed of in sealed plastic bags and placed either in the trash dumpsters or proper trash receptacles designated by the Board for collection or removal from the Condominium.
- (o) Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including, but not limited to, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions shall not be pursued or undertaken on any part of the Condominium. Clothing, bedding, rugs, mops, appliances, indoor furniture and other household items shall not be placed or stored outside the Units.
- (p) Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited unless approved in writing by the Board.

- (q) Window Treatments. The color of all window treatments visible from outside the Residential Unit must be white or off-white. Bed sheets, blankets, paper and similar type items shall not be used as window treatments. No foil or other reflective material shall be used on any windows for sunscreens, blinds, shades or any other purpose.
- (r) Grilling. The use of outdoor grills, except for electric grills, on or in the Condominium, including, without limitation, the balconies and decks, is prohibited.
- (s) Replacing Carpet with Tile or Hardwood Floors. Other than the Declarant, no Owner, Occupant, or any other Person may replace carpeting with a tile, marble, vinyl or hardwood floor, or other hard surfaced flooring material, without first obtaining approval as set forth in Section 14. Among other factors, it may be considered whether the change will cause noise to any other property which will exceed the average noise level in property below Units with carpeted floors and whether the weight of the proposed flooring is appropriate and will not cause problems to the structure or subflooring. The Owner applying for such approval shall provide information regarding these factors, as well as other information requested regarding the proposed flooring and its effect.
- (t) Transient Use. No transient tenants or Occupants shall be accommodated in the Unit.
- (u) Solar Devices. No device which is designed or used for collection of or heating by solar energy or other similar purposes shall be placed, allowed or maintained upon any portion of the Condominium, including any Unit, without the prior written consent of the Board or its designee.
- (v) Exterior Colors. As exterior maintenance of Units, including, without limitation, painting, is the responsibility of the Association, no Person may paint or otherwise alter the exterior of any Unit or improvements constructed or maintained thereon without the prior written consent of the Board or its designee.
- (w) Mailboxes. No mailboxes and appurtenant posts and/or structures shall be erected without the prior written approval of the Board or its designee. Generally, the foregoing must be of the same type and color as that originally installed by a Declarant or its affiliates.
- (x) Entry Features and Street Signs. No Person shall alter, remove or add improvements to any entry features or street signs constructed within the Condominium, or any part of any easement area associated therewith, without the prior written consent of the Board or its designee.
- (y) Declarant Right. Notwithstanding any provisions contained in this Declaration to the contrary, for so long as either Declarant owns at least one (1) Unit which has never been sold (other than the initial sale of the Commercial Units to Smyrna Market Village, LLC or its designee which is designated by written installment as

a Declarant hereunder), it shall be expressly permissible for such Declarant and its affiliates, contractors, agents, employees, assigns and representatives to maintain and carry on, upon such portion of the Condominium as such Declarant may deem necessary other than any area owned or controlled by an Owner (unless such Owner consents thereto), such facilities and activities as in such Declarant's sole opinion may be reasonably required, convenient or incidental to the repair (if any) and sale of the Units, such as, but without limitation, business offices, signs, model units, construction trailers and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use the parking facilities in the Condominium for such purposes and to use the Units owned by such Declarant and its affiliates as model units and as offices for the sale of the Units and related activities.

16. **LEASING.**

- (a) Residential Units. In order to preserve the character of the Residential Units in the Condominium as predominantly owner-occupied, and to comply with the eligibility requirements for financing in the secondary mortgage market, leasing of Residential Units shall be governed by the restrictions imposed by this Section. As used herein, "leasing" shall mean the regular, exclusive occupancy of a Residential Unit by any Person(s) other than the Owner for which the Owner receives any direct or indirect monetary or economic benefit; the occupancy of a Residential Unit by a roommate of an Owner then occupying a Residential Unit shall not constitute leasing. Except as provided herein, the leasing of Residential Units shall be prohibited.
- (i) General. Owners desiring to lease their Residential Units may do so only if they have applied for and received from the Board either a "leasing permit" or a "hardship leasing permit." Such a permit, upon its issuance, will allow an Owner to lease such Owner's Residential Unit, provided that such leasing is in strict accordance with the terms of the permit and this Section. The Board shall have the authority to establish conditions as to the duration and use of such permits consistent with this Section. All leasing permits and hardship leasing permits shall be valid only as to a specific Owner and Residential Unit and shall not be transferable between either Residential Units or Owners (including a subsequent Owner of a Residential Unit where a permit was issued to the Owner's predecessor in title).
- (ii) Leasing Permits. An Owner's request for a leasing permit shall be approved if current, outstanding leasing permits have not been issued for more than 25% of the total Residential Units in the Condominium. A leasing permit shall be automatically revoked upon the happening of any of the following events: (i) the sale or transfer of the Residential Unit to a third party (excluding sales or transfers to (a) an Owner's spouse, (b) a person cohabiting with the Owner, and (c) a corporation, partnership, company, or legal entity in which the Owner is a principal); (ii) the failure of an Owner to lease such Owner's Residential Unit within 90 days of the



leasing permit having been issued; or (iii) the failure of an Owner to have such Owner's Residential Unit leased for any consecutive 90-day period thereafter. If current leasing permits have been issued for more than 25% of the Residential Units, no additional leasing permits shall be issued (except for hardship leasing permits) until the number of outstanding current leasing permits falls below 25% of the total Residential Units in the Condominium. Owners who have been denied a leasing permit shall automatically be placed on a waiting list for a leasing permit and shall be issued the same if they so desire when the number of current outstanding leasing permits issued falls to 25% or less of the total Residential Units in the Condominium. The issuance of a hardship leasing permit to an Owner shall not cause the Owner to be removed from the waiting list for a leasing permit.

- (iii) Hardship Leasing Permits. If the failure to lease will result in a hardship, the Owner may seek to lease on a hardship basis by applying to the Board for a hardship leasing permit. The Board shall have the authority to issue or deny requests for hardship leasing permits in its discretion after considering the following factors: (i) the nature, degree, and likely duration of the hardship, (ii) the harm, if any, which will result to the Condominium if the permit is approved, (iii) the number of hardship leasing permits which have been issued to other Owners, (iv) the Owner's ability to cure the hardship, and (v) whether previous hardship leasing permits have been issued to the Owner. Hardship leasing permits shall be valid for a term not to exceed one (1) year. Owners may apply for additional hardship leasing permits. Hardship leasing permits shall be automatically revoked if during the term of the permit, the Owner is approved for and receives a leasing permit.
  
- (iv) Leasing Provisions. Leasing which is authorized, pursuant to permit, hereunder shall be governed by the following provisions:
  - (aa) Notice. At least seven (7) days prior to entering into the lease of a Residential Unit, the Owner shall provide the Board with a copy of the proposed lease agreement. The Board shall approve or disapprove the form of said lease. In the event a lease is disapproved, the Board shall notify the Owner of the requisite action to be taken in order to bring the lease in compliance with the Declaration and any rules and regulations adopted pursuant thereto.
  
  - (bb) General. Residential Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form which is deemed acceptable. There shall be no subleasing of Residential Units or assignment of leases without prior written

Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Residential 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 Residential Unit. The Owner must provide the lessee copies of the Declaration, Bylaws, and the Association's rules and regulations, as well as the Master Declaration and the Master Association's bylaws and rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

(cc) Liability for Assessments, Use of Common Elements, and Compliance with Declaration, Bylaws, and Rules and Regulations. Each Owner covenants and agrees that any lease of a Residential 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 Residential Unit, agrees to the applicability of this covenant and incorporation of the following language into the lease:

(i) Compliance with Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and Association rules and regulations adopted pursuant thereto, as well as the Master Declaration and the Master Association's bylaws and rules and regulations (collectively, "Governing Documents"), and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure such compliance. The Owner (lessor) shall cause all Occupants of such Owner's (lessor's) Residential Unit to comply with the Governing Documents and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Residential Unit are fully liable and may be sanctioned for any such violation. If the lessee, or a person living with the lessee, violates the Governing Documents for which a fine is imposed, notice of the violation shall be given to the lessor and the lessee, and such fine may be assessed against the lessee in accordance with Article V, Section 2 of the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the lessor shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Residential Unit.

Any violation of the Governing Documents by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the lessor to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The lessor 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 Governing Documents, including, without limitation, the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the lessor, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Unit.

- (ii) Use of Common Elements. The lessor transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the lessor has to use the Common Elements and the Master Association common property, including, but not limited to, the use of any and all recreational facilities and other amenities.
- (iii) Liability for Assessments. If lessor 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 lessor 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 herewith, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were the owner of the Residential Unit. The above provision shall not be construed to release the lessor from any obligation, including the obligation for assessments, for which lessor would otherwise be responsible.
- (v) Applicability. Notwithstanding the above, this Section shall not apply to any leasing transaction entered into by a Declarant, the Association, or the holder of any first Mortgage on a Residential Unit who becomes the

Owner of a Residential Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage, and they shall be permitted to lease without obtaining a permit.

(b) Commercial Units.

(i) General. Commercial Units may be leased for uses consistent with this Declaration. Commercial Units may be leased in their entirety or may be subdivided into smaller leasable spaces of at least seven hundred fifty (750) square feet. Within fifteen (15) 'days after executing a lease agreement for the lease of a Commercial Unit, the Owner shall provide the Board with the name of the lessee and all other people occupying the Commercial Unit. The Owner must provide the lessee copies of the Declaration, Bylaws, and the Association's rules and regulations.

(ii) Compliance With Declaration, Bylaws, and Rules and Regulations, Use of Common Elements, and Liability for Assessments. Each Owner and each lessee, by occupancy of a Commercial Unit or any portion thereof, covenant and agree that any lease for a Commercial Unit or any portion thereof shall contain the following language and agree that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Commercial Unit:

(aa) Compliance With Declaration, Bylaws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, Bylaws, and Association rules and regulations adopted pursuant thereto, and shall control the conduct of all other Occupants and guests of the leased Commercial Unit in order to ensure such compliance. The Owner (lessor) shall exercise its reasonable efforts to require that all Occupants of such Owner's (lessor's) Commercial Unit to comply with the Declaration, Bylaws, and Association rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such applicable Occupants of the Commercial Unit are fully liable and may be sanctioned for any such violation. If the lessee, or lessee's employee, violates the Declaration, Bylaws, or an Association rule or regulation for which a fine is imposed, notice of the violation shall be given to the lessor and the lessee, and such fine may be assessed against the lessee in accordance with Article V, Section 2 of the Bylaws. If the fine is not paid by the lessee within the time period set by the Board, the lessor shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Commercial Unit.

Any violation of the Declaration, Bylaws, or Association rules and regulations adopted pursuant thereto by the lessee, any

Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and, if not cured within thirty (30) days of notice (which notice states in bold, capitalized letters that failure to cure such default within such thirty (30) day period will permit the Association or Owner to terminate the Lease and to proceed with eviction) from the Association (with a copy to the Owner of such Unit) or to the Owner of such Unit, authorizes the lessor to terminate the lease without liability and to evict the lessee in accordance with Georgia law. The lessor 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 Association rules and regulations adopted pursuant thereto, including, without limitation, the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the lessor, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including reasonable attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Commercial Unit.

(bb) Use of Common Elements. The lessor transfers and assigns to the lessee, for the term of the lease, any and all rights and privileges that the lessor has, with respect to the leased premises, to use the Common Elements.

(iii) Applicability. Notwithstanding the above, this Section shall not apply to any leasing transaction entered into by a Declarant, the Association, or the Holder of any first Mortgage on a Commercial Unit who becomes the Owner of a Commercial Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

## 17. SALE OF UNITS.

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

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

18. **MAINTENANCE RESPONSIBILITY.**

- (a) By the Owner. Except to the extent otherwise provided in Section 18(b), each Owner shall have the obligation to maintain and keep in good repair all portions of such Owner's Unit and all Limited Common Elements, including, without limitation, heating and air conditioning equipment and meters, decks and porches, assigned as Limited Common Elements to the Unit. This maintenance responsibility shall include, but not be limited to, the following: all glass surfaces (including exterior cleaning), windows, window frames and casings and locks (including caulking of windows); all doors, doorways, door frames, and hardware that are part of the entry system of the Unit (except for periodic painting or staining of the exterior surface of entry doors and door frames); the air conditioning compressor serving the Unit and the fan coil; heating and air conditioning equipment and meters assigned as Limited Common Elements of the Unit or otherwise serving the Unit; and all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether located within or without a Unit's boundaries (including all gas, electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits, or other apparatus serving only the Unit).

In addition, each Owner shall have the responsibility:

- (i) to keep in a neat, clean and sanitary condition any Limited Common Elements serving such Owner's Unit;
  - (ii) to perform such Owner's responsibility in such manner so as not to unreasonably disturb other persons in other Units;
  - (iii) to promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible; and
  - (iv) 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 is necessitated by reason of the willful or negligent act of the Owner or such Owner's family, employees, tenants or guests, with the cost thereof to be added to and become part of the next chargeable assessment to such Owner's Unit.
- (b) By the Association. Subject to the terms of the Master Declaration, the Association shall maintain and keep in good repair as a Common Expense the Area of Common Responsibility. The Area of Common Responsibility includes, without limitation, the following:
- (i) all Common Elements, including any Limited Common Elements (including, without limitation, garages, decks and balconies), but excluding all improvements made to such Limited Common Elements, and

including all portions of the roof and the roof support systems, including the roof joists and cross braces; and

- (ii) periodic painting and/or staining of exterior surfaces of the Condominium buildings and of entry doors and door frames on a schedule to be determined by the Board; provided, however the Association shall not take any action to alter the appearance of the exterior of the buildings without the prior written consent of the Master Association.

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

The Association shall not be liable for injury or damage to person or property caused by or resulting from the elements, the Owner of any Unit, any other Person, any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements, or any pipe, drain, conduit, appliance or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to any Owner, or any Owner's Occupants, guests, employees or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements. The Association shall not be liable to any Owner, or any Owner's Occupants, guests, employees or family, for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this Section 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 any inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or any action taken by the Association to comply with any law, ordinance, order or directive of any municipal or other governmental authority.

The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. As finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready." Components that may require repair or replacement, such as tile and trim, will be reinstated only to the extent of readily available matching or similar materials (trim and such will also be finished to "paint-ready"). Due to the uncontrollability of quality of repair, items such as faux paint treatment, wallpaper, ceiling/wall appliqué, and any other finishes that the Board deems unreasonable, will not be the responsibility of the Association. Accessibility around personal belongings for workers to perform such repairs is the responsibility of the Owner. Removal, storage, or other protective measures of

personal items are also the responsibility of the Owner. If the removal, storage or other protective measures are not taken by the Owner and damage occurs due to the repair process, the Association will not be liable for such damage. Upon completion of such repairs, the Association will perform cursory cleaning. As a level of cleaning is subjective, the Association will not be responsible for a detailed cleaning. The Board has sole discretion on defining what is reasonable for the level, quality and extent of the repair and subsequent cleaning. 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.

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

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

If the Board determines that the need for maintenance or repair is in the Area of Common Responsibility and is caused through the willful or negligent act of any Owner or Occupant or their family, employees, 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 the cost thereof shall become a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

- (d) Measures Related to Insurance Coverage.
- (i) The Board, upon resolution, shall have the authority to require all or any Owner(s) 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 smoke detectors, requiring Owners to make improvements to the Owner's Unit, and such other measures as the Board may reasonably require, so long as the cost of such work does not exceed Three Hundred Dollars (\$300.00) per Unit in any twelve (12) month period.

- (ii) In addition to, and not in limitation of, any other rights the Association may have, if any Owner does not comply with any requirement made by the Board pursuant to Section 18(d)(i) above, the Association, upon fifteen (15) days' written notice (during which period the Owner may perform the required act or work without further liability), may perform such required act or work at the Owner's sole cost. Such cost shall be an assessment and a lien against the Unit as provided herein. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to Section 18(d)(i), 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.

(e) Maintenance Standards and Interpretation. 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. These variances shall not constitute a waiver by the Board of the right to adopt and enforce maintenance standards under this Section. No decision or interpretation by the Board shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board.

## 19. MORTGAGEE'S RIGHTS.

- (a) Mortgagee Consent. Unless Owners of at least two-thirds (2/3) of the Commercial Units and at least two-thirds (2/3) of the Residential Units and their first Mortgagees 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 levying assessments or charges, allocating distributions of hazard insurance proceeds or condemnation awards, or 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, as

authorized herein, shall not be deemed a transfer within the meaning of this clause); or

- (v) use hazard insurance proceeds for losses to any portion of the Condominium (whether to Units or to Common Elements) for other than the repair, replacement, or reconstruction of such portion of the Condominium.

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

- (a) Assessments. Where the Mortgagee holding a first Mortgage of record or a secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the secondary purchase money Mortgage is the seller of the Unit), or other purchaser of a Unit, obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, such Person shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such Person, its successors and assigns. Additionally, such Person shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.
- (b) Notice. Upon written request to the Association identifying the name and address of the Mortgage holder and the Unit number or address, any Eligible Mortgage Holder, or insurer or guarantor of a first Mortgage on a Unit, will be entitled to timely written notice of:
  - i) any proposed amendment of the Condominium Instruments effecting a change in (a) the boundaries of any Unit or the exclusive easement rights appertaining thereto; (b) the interests in the Common Elements or Limited Common Elements appertaining to any Unit or the liability<sup>^</sup> for Common Expenses appertaining thereto; (c) the number of votes in the Association appertaining to any Unit; or (d) the purposes to which any Unit or the Common Elements are restricted;
  - ii) any proposed termination of the Condominium;
  - iii) any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a first Mortgage held by such Eligible Mortgage Holder;
  - iv) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60)

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Board, without approval of the Owners or any other Person or group, may cause an amendment to this Declaration to be recorded to reflect such changes.

- (i) Construction of this Section. Nothing contained in this Section shall be construed to reduce the percentage vote that must otherwise be obtained under the Condominium Instruments or Georgia law for any of the actions set forth in this Section.

20. **GENERAL PROVISIONS.**

- (a) Security. Declarant and the Association may, but shall not be obligated to, maintain or support certain activities within the Condominium designed to make the Condominium and the Units safer than they otherwise might be. HOWEVER, THE ASSOCIATION, THE MASTER ASSOCIATION, DECLARANT, THEIR PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS, SHALL NOT IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE CONDOMINIUM, NOR SHALL ANY OF THE FOREGOING BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. FURTHERMORE, THERE IS NO GUARANTEE FROM ANYONE THAT NON-UNIT OWNERS AND NON-OCCUPANTS WILL NOT GAIN ACCESS TO THE CONDOMINIUM AND COMMIT CRIMINAL ACTS ON THE CONDOMINIUM NOR IS THERE ANY GUARANTEE THAT CRIMINAL ACTS ON THE CONDOMINIUM WILL NOT BE COMMITTED BY OTHER UNIT OWNERS OR OCCUPANTS. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, THE MASTER ASSOCIATION, DECLARANT, THEIR PARTNERS AND AFFILIATES, ANY SUCCESSOR DECLARANT, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEES, MEMBERS, SHAREHOLDERS, EMPLOYEES, AGENTS, SUCCESSORS AND ASSIGNS, ARE NOT INSURERS AND THAT EACH PERSON USING THE CONDOMINIUM ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO PROPERTY, TO UNITS, AND TO THE CONTENTS OF UNITS AND THE STRUCTURES THEREON RESULTING FROM ACTS OF THIRD PARTIES.
- (b) Dispute Resolution. Prior to filing a lawsuit against the Association, the Board, or any officer, director, or property manager of the Association, an Owner or Occupant must request and attend a hearing with the Board. Any such request

- shall be in writing and shall be personally delivered to any member of the Board 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 grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the Person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the request.
- (c) Right of Action. All Owners hereby acknowledge and agree that the Association shall not be entitled to institute any legal action against anyone on behalf of any or all of the Owners which is based on any alleged defect in any Unit or the Common Elements, or any damage allegedly sustained by any Owner by reason thereof, but rather, that all such actions shall be instituted by the Person(s) owning such Units or served by such Common Elements or allegedly sustaining such damage. Notwithstanding the above, once the Declarant no longer has the right to appoint and remove directors and officers of the Association, as set forth in Article III, Section 2 of the Bylaws, the Board may negotiate the resolution of any alleged defect(s) in the Common Elements and Area of Common Responsibility on behalf of the Owners and shall have the right and authority to settle and release on behalf of any and all of the Owners claims, causes of action, damages and suits involving the same. Any such settlement and release shall bind all Owners and their successors and assigns. This subsection may not be amended without the written consent of the Declarant.
- (d) Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the total Association vote of the Owners of the Residential Units and at least seventy-five percent (75%) of the total Association vote of the Owners of the Commercial Units. This subsection shall not apply, however, to (i) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (ii) the imposition and collection of assessments as provided in Section 11, (iii) proceedings involving challenges to ad valorem taxation, or (iv) counterclaims brought by the Association in proceedings instituted against it. This subsection shall not be amended unless such amendment is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above and such amendment is consented to in writing by the Declarant.
- (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) Parking Areas. The Declarant, its (their) affiliates, the Master Association and the Association, and any director, officer, employee or agent of any of the foregoing,

shall not be liable for loss or damage to any property, including, without limitation, vehicles, placed or kept in any parking space or area in or near the Condominium. All Owners, Occupants and other Persons who use a parking space or area in or near the Condominium do so at their own risk.

- (g) Disclosures. Every Owner, by acceptance of a deed to a Unit, acknowledges that, in addition to being subject to and bound by the Condominium Instruments, such Owner and such Owner's Unit are or will be bound by and subject to the Master Declaration (also referred to herein as the Reciprocal Easement Agreement), which may be recorded subsequent to such Owner's acquisition of title to the Unit, but to which such Owner and such Owner's Unit will be bound by and subject to nonetheless. Each Owner further acknowledges that the buildings in which the Unit(s) are located also contain commercial/office property and/or units, which are or will be located on the lowermost floor of the buildings of the Condominium. In addition to all of the rights and obligations which have been conferred or imposed upon the Association pursuant to this Declaration, the Bylaws, or the Articles of Incorporation, the Association shall be entitled to exercise any of the rights conferred upon it, and shall be subject to all of the obligations imposed upon it, pursuant to the Reciprocal Easement Agreement, subject to all superior rights and powers which have been conferred pursuant to the Reciprocal Easement Agreement. The Association shall take no action in derogation of the rights of or contrary to the interest of the Reciprocal Easement Agreement.

Each Owner and Occupant also acknowledge the following:

- (i) The Condominium is located adjacent to thoroughfares which could be improved or widened in the future.
- (ii) The views from Units can change over time due to, among other things, additional development and the removal or addition of landscaping.
- (iii) No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.
- (iv) Since in every development, there are conditions which different people may find objectionable, it is acknowledged that there may be conditions outside of an Owner's Unit which the Owner and/or Occupant thereof finds objectionable and that it shall be the sole responsibility of the Owner and/or Occupant to become acquainted with conditions outside such Owner's or Occupant's Unit which could affect the Unit.
- (v) No representations are made that the Units are or will be soundproof or that sound may not be transmitted from one Unit to another.
- (vi) Survey and Floor Plans and the dimensions and square footage calculations shown thereon and on Exhibit "B" are only approximations. Any Owner or other Person who is concerned about any representations

regarding Survey and/or Floor Plans should do independent investigation as to the dimensions, measurements and square footage of such Owner's or Person's Unit.

- (h) Successor Declarants. Any successor to a Declarant shall not be responsible or subject to liability, by operation of law, or through the purchase of such Declarant's interest in the Condominium or any portion thereof at foreclosure, or otherwise, for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the time the successor succeeded to such interest of the Declarant.
- (i) Unit Keys. Each Owner, by acceptance of a deed to a Unit, agrees to provide the Association with a key to the Unit to be used by the Association for maintenance, emergency, security or safety purposes as provided in Section 10(a) of this Declaration and for pest control or sprinkler testing, if necessary, as provided in Section 22(d) of this Declaration. The Declarant, its (their) affiliates, the Master Association and the Association, and any director, officer, employee or agent of any of the foregoing (collectively, "released parties"), shall not be liable for any loss or damage due to the Association holding such key, or use of such key for the purposes described above, and each Owner shall indemnify and hold harmless the released parties from and against any and all expenses, including, without limitation, attorney's fees, incurred by or imposed upon the released parties (or any of them) in connection with any action, suit, or other proceeding (including settlement of any such action, suit or proceeding) brought by the Owner or such Owner's family, tenants, guests, employees, invitees, or licensees against the released parties (or any of them) arising out of or relating to the Association's holding or use of such key for the purposes described above.
- (j) Contracts Executed During Declarant Control. All contracts or leases executed by or on behalf of the Association during the period in which the Declarant has the right to appoint the directors and officers of the Association under the Bylaws shall contain a termination clause permitting the Association to terminate the contract or lease at any time, without cause and without penalty, upon not more than ninety (90) days' prior written notice.

Each Owner acknowledges that Declarant and its affiliates may provide services utilized by communities such as the Condominium, including, but not limited to, property management and landscape services. Each Owner consents and agrees that the Association, acting through the Declarant-appointed Board, may enter into service contracts with Declarant and its affiliates on its own authority and without approval of any third party.

- (k) Variations. Notwithstanding anything to the contrary contained herein, the Board or its designee, with the prior approval of the Master Association board of directors, shall be authorized to grant individual variations from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application

or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Condominium.

21. **EMINENT DOMAIN.**

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

22. **EASEMENTS.**

- (a) **Use and Enjoyment.** Each Owner and Occupant shall have a right and nonexclusive easement of use and enjoyment in and to the Common Elements (including the right of access, ingress and egress to and from such Owner's or Occupant's Unit over those portions of the Condominium designated for such purpose, e.g., access to a roof to maintain, repair or replace HVAC equipment), and such non-exclusive easement shall be appurtenant to and shall pass with the title to such Unit, subject to (i) the rights of the Owners to the exclusive use of the Limited Common Elements assigned to their respective Units, (ii) the right of the Association to control the use and enjoyment of the Common Elements as provided by the terms of this Declaration, including, but not limited to, the right of the Association to suspend voting and use privileges as provided herein and/or in the Bylaws, and (iii) the right of the Association to have access to the Units and Limited Common Elements to discharge its rights and obligations under the Condominium Instruments, including, without limitation, the maintenance responsibility of the Association. 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. All portions of the Condominium also shall be subject to easements of encroachment as provided in the Act.
- (b) **Declarant Easements.** So long as a Declarant owns at least one (1) Unit which has never been sold (other than the initial sale of the Commercial Units to Smyrna Market Village, LLC or its designee which is designated by written instrument as a Declarant hereunder), such Declarant and its affiliates, contractors, representatives, agents, assigns and employees shall have (i) an easement on, over, through, under and across the Condominium for the construction, installation, maintenance and use of signs, sales offices, business offices, construction trailers, promotional facilities and model units on the Condominium, together with such other facilities as in the opinion of such Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development or sale of the Condominium and/or the Units therein,



and (ii) a transferable easement on, over, through, under and across the Common Elements for the purpose of making improvements on the Condominium or any portion thereof, for the purpose of installing, replacing, repairing and maintaining all utilities serving the Condominium, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

- (c) Utilities. To the extent that a sprinkler system, if any, or any utility line, pipe, wire or conduit serving any Unit, Units or the Common Elements shall lie wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit, Units or the Common Elements shall be burdened with a nonexclusive easement for access to and use, maintenance, repair and replacement of such sprinkler system, 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. Maintenance, replacement and repair of any such sprinkler system, utility line, pipe, line, conduit, duct or wire shall be as otherwise set forth in this Declaration. In such circumstance, the Person for whose benefit such work is being done shall be responsible for repair of all incidental damage to any Unit resulting from performance of any such work. All Owners hereby covenant and agree that as finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready." Components that may require repair or replacement, such a tile and trim, will be repaired only to the extent of readily available materials or similar materials (trim and such will also be finished to "paint ready"). Due to the uncontrollability of quality of repair, items such as faux paint treatment, wallpaper, ceiling/wall appliqué, and any other similar types of finishes will not be the responsibility of the benefited Person.
- (d) Pest Control; Sprinkler Testing. The Association may, but shall not be obligated to, dispense chemicals for the extermination of insects and pests within the Residential Units and, if and to the extent approved by the Owner of such Unit, the Commercial Units for which such consent has been obtained and the Common Elements. In addition, sprinklers, if any, may need periodic testing, although it is not the obligation or responsibility of the Association to do so. In the event the Association chooses to provide such pest control or in the event sprinkler testing is to be conducted, the Association and contractors, representatives, agents and other Persons authorized by the Board shall have an easement to enter Units for the purpose of testing sprinklers and/or dispensing chemicals for the extermination of insects and pests within the Units and Common Elements, as applicable. 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 to allow entry into the Unit for these purposes. The Declarant, its (their) affiliates, the Master Association and the Association, and the directors, officers, employees and agents of any of the foregoing, shall not be liable for any illness, damage or injury caused by the testing of sprinklers or the dispensing of chemicals as described herein.

23. **AMENDMENTS.**

Except where a higher vote is required for action under any other provisions of this Declaration or by the Act, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent, of the members of the Association holding sixty-six and two-thirds percent (66 2/3%) or more of the total eligible vote thereof with respect to the Residential Units plus members of the Association holding sixty-six and two-thirds percent (66-2/3%) or more of the total eligible vote with respect to the Commercial Units. As long as a Declarant owns at least one (1) Unit, any amendment to this Declaration or the Bylaws shall require the written consent of such Declarant. 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 land records of the county in which the Condominium is located. Any amendment duly certified and recorded shall be conclusively presumed to have been duly adopted in accordance with this Declaration. Owners whose voting rights have been suspended pursuant to this Declaration or the Bylaws shall not be counted toward the amendment requirement.

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

- (a) Voting;
- (b) Assessments, assessment liens or subordination of such liens;
- (c) Reserves for maintenance, repair and replacement of the Common Elements;
- (d) Insurance or fidelity bonds;
- (e) Rights to use of the Common Elements;
- (f) Responsibility for maintenance and repair of the Condominium;
- (g) Expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium, except the submission of any of the Additional Property to the Condominium as set forth in this Declaration,
- (h) Boundaries of any Unit;

- (i) The interests in the Common Elements or Limited Common Elements;
- (j) Convertibility of Units into Common Elements or of Common Elements into Units;
- (k) Leasing of Units;
- (l) Imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey such Owner's Unit in the Condominium;
- (m) Establishment of self-management by the Association where professional management has been required by any of the agencies or corporations set forth below; and
- (n) Amendment of any provisions which are for the express benefit of Eligible Mortgage Holders or insurers or guarantors of first Mortgages on Units in the Condominium.

Notwithstanding the foregoing, but provided there is no adverse effect on any Commercial Unit or the Owner or tenant thereof, the Declarant or the Board, without the necessity of a vote from the Owners, may amend this Declaration or the Bylaws (aa) to comply with any applicable state, city, county or federal law, (bb) to bring the Condominium into compliance with applicable rules, regulations and/or requirements of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the U.S. Department of Housing and Urban Development, and/or the U.S. Department of Veterans Affairs, and (cc) to correct scrivener's errors.

No provision of this Declaration or the Bylaws which reserves or grants special rights to Declarant and/or its affiliates shall be amended without the prior written consent of a Declarant and any affiliates affected by such amendment, so long as such Declarant and/or such affiliates, as the case may be, own at least one (1) Unit. No provision of this Declaration or the Bylaws which reserves or grants special rights to the Master Association shall be amended without the prior written consent of such of the Master Association.

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

#### 24. **SEVERABILITY.**

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

#### 25. **DECLARANT RIGHTS.**

John Wieland Homes and Neighborhoods, Inc. shall have the right, as long as it owns at least one (1) Unit, to conduct such sales and marketing activities in the Residential Units of the Condominium as it deems appropriate, and it and its affiliates shall have easement rights across the Common Elements to erect signs and to conduct such other sales and marketing activity as provided herein. Smyrna Market Village, LLC and its successors and assigns as Declarant, and its affiliates, shall have the right, as long as such Declarant owns at least one (1) Unit, to conduct such sales and marketing activities in the Commercial Units of the Condominium as such Declarant deems appropriate, and such Declarant and its affiliates shall have easement rights across the Common Elements to erect signs and to conduct such other sales and marketing activity as provided herein.

## 26 **EXPANSION OF THE CONDOMINIUM.**

Declarant reserves the right and option to expand the Condominium by adding to the Condominium and submitting to this Declaration all or any part of the Additional Property on one or more occasions. Except for zoning and other governmental requirements, there are no limitations as to the location of improvements on the Additional Property. The Additional Property may be added as a whole at one time, or portions may be added at different times, or all or portions may not be added at all. There are no limitations fixing the boundaries of any portion of the Additional Property that may be submitted to the Declaration, and there are no limitations regulating the order in which portions of the Additional Property may be submitted to this Declaration. However, there is no obligation or guarantee to expand the Condominium at all, or to submit any of the Additional Property to this Declaration, or to develop and/or construct the Additional Property or any portion thereof in any manner similar to the then existing Condominium.

This right and option shall expire seven (7) years from the date of recording of this Declaration; provided, however, that Owners of Residential Units and Owners of the Commercial Units to which two-thirds (2/3) of the total vote of the Owners of each the Residential Units and of the Commercial Units, respectively, in the Association appertain, excluding any votes appurtenant to any Unit or Units then owned by the Declarant, may consent to the extension of this expansion option within one (1) year prior to the date upon which the option would have otherwise expired.

The maximum number of Units that may be created on the Additional Property and added to the Condominium is sixty four (64). The maximum number of Units per acre that may be created on the Additional Property and added to the Condominium is 140.

No assurances are made that any improvements will be made on all or any of the Additional Property which may be submitted to this Declaration. A portion of the Additional Property shall be subject to the use restrictions set forth herein when such portion is added to the Condominium. No assurances are made that the units which may be built on all or any portion of the Additional Property will be identical or similar to the Units or each other. Any such improvements may include Commercial Units or Residential Units or both. All improvements to be located on a portion of the Additional Property which is being submitted to the Condominium shall be substantially complete prior to its submission to the Condominium. The Declarant shall have the right to assign Limited Common Elements on the Additional Property in accordance with the provisions hereof. The undivided interests in the Common Elements are allocated

among the Units on a substantially equal basis, and, upon the expansion of the Condominium to include a portion of the Additional Property, may be reallocated on the same basis or on the basis of the approximate square footage of each Unit in comparison to the approximate square footage of all Units.

Any expansion under this Section shall be effected by Declarant's executing and recording the amendments to this Declaration and the plats and plans required by the Act at Declarant's sole expense. The units thereby created and added shall be owned by Declarant (until sold to one or more other parties), but the Common Elements shall be owned by all of the Owners.

The expansion rights and powers under this Section may be exercised by either or any Declarant acting alone without the consent of any other person or entity constituting Declarant.

27. **PREPARER.**

This Declaration was prepared by David N. Dorough, Dorough & Dorough, LLC, Two Decatur Towncenter, Suite 520, 125 Clairemont Avenue, Decatur, GA 30030.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned duly authorized officer of Declarant has executed this Declaration this 30th day of September, 2002.

Signed, sealed and delivered in the presence of:

Andrea Logstrand

Witness

[Signature]

Notary Public

My Commission Expires:

[NOTARIAL SEAL]



DECLARANT:

JOHN WIELAND HOMES AND NEIGHBORHOODS, INC.

By: [Signature]

[CORPORATE SEAL]



The Association has executed this instrument and affixed the seal below this 30th day of September 2002 for the purpose of consenting to all of the terms and provisions of this Declaration.

Signed, sealed and delivered in the presence of:

Andrea Logstrand

Witness

[Signature]

Notary Public

My Commission Expires:

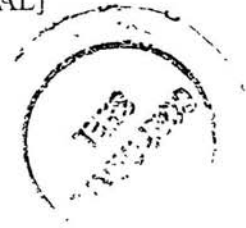
[NOTARIAL SEAL]



SMYRNA MARKET VILLAGE CONDOMINIUM ASSOCIATION, INC.. a Georgia nonprofit corporation

By: [Signature]

[CORPORATE SEAL]



**EXHIBIT "A"**

**Description of Submitted Property**

(see attached)

Exhibit "A"

Legal Description

**Tract 3 - Smyrna Market Village**

All that tract or parcel of land lying and being in Land Lots 521 and 522 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, said property being more particularly shown and designated as Tract 3 containing 0.39 Acres (17,056 Sq. Ft) on Plat entitled "Smyrna Market Village Residential & Commercial Condominium Plat" prepared for John Wieland Homes and Neighborhoods, Inc. by Post, Buckley, Schuh & Jernigan, Inc., dated September 25, 2002 and last revised October 2, 2002, and described as follows:

TO FIND THE TRUE POINT OF BEGINNING, COMMENCE THE POINT OF COMMENCEMENT ("POC") at an iron pin set at the point of intersection of the southwesterly right of way line of Atlanta Road (Variable Right of Way) with the northwesterly right of way line of Memorial Place (Variable Right of Way), said POC being located 52.2 feet from the centerline of " Atlanta Road and 32.4 feet from the centerline of Memorial Place;

From said POC run thence South 80 degrees 13 minutes 42 seconds West a distance of 225.50 feet to an iron pin set at the southeast corner of Tract 3 and the TRUE POINT OF BEGINNING (said iron pin set also being located North 21 degrees 38 minutes 33 seconds East a distance of 33.42 feet from an iron pin found (1/2" Rebar) located at the northwest corner of property now or formerly owned by Old Smyrna Cemetery); and running thence along property now or formerly owned by the City of Smyrna, the following courses and distances:

South 86 degrees 09 minutes 24 seconds West a distance of 224.92 feet to an iron pin set;

North 03 degrees 50 minutes 36 seconds West a distance of 75.83 feet to an iron pin set; (said iron pin set also being located South 03 degrees 50 minutes 36 seconds East a distance of 71.10 feet from an iron pin set at the southwest corner of Tract 4 of Smyrna Market Village)

North 86 degrees 09 minutes 24 seconds East a distance of 224.92 feet to an iron pin set; (said iron pin set also being located South 03 degrees 50 minutes 36 seconds East a distance of 71.10 feet from an iron pin set at the southeast corner of Tract 4 of Smyrna Market Village);

South 03 degrees 50 minutes 36 seconds East a distance of 75.83 feet to an iron pin set and THE TRUE POINT OF BEGINNING;

Being the same property as the "Legal Description of Tract 3 (Amended Agreements)" described in Exhibit "C" attached to the Amended Agreement As To Recorded Documents, entered into as of March 29, 2002, effective as of January 31, 2002, Filed and Recorded on April 30, 2002 in Deed Book 13530, Page 1549, Cobb County, Records, and re-recorded on May 3, 2002 in Deed Book 1351, Page 5621, Cobb County Records.



Exhibit "A"

Legal Description

**Tract 4 - Smyrna Market Village**

All that tract or parcel of land lying and being in Land Lot 521 of the 17th District, 2nd Section, City of Smyrna, Cobb County, Georgia, said property being more particularly shown and designated as Tract 4 containing 0.39 Acres (17,056 Sq. Ft) on Plat entitled "Smyrna Market Village Residential & Commercial Condominium Plat" prepared for John Wieland Homes and Neighborhoods, Inc by Post, Buckley, Schuh & Jernigan, Inc, dated September 25, 2002 and last revised October 2, 2002, and described as follows

TO FIND THE TRUE POINT OF BEGINNING, COMMENCE THE POINT OF COMMENCEMENT ("POC") at an iron pin set at the point of intersection of the southwesterly right of way line of Atlanta Road (Variable Right of Way) with the northwesterly right of way line of Memorial Place (Variable Right of Way), said POC being located 52.2 feet from the centerline of Atlanta Road and 32.4 feet from the centerline of Memorial Place;

From said POC run thence North 64 degrees 58 minutes 38 seconds West a distance of 256.11 feet to an iron pin set at the southeast corner of Tract 4 and the TRUE POINT OF BEGINNING (said iron pin set also being located North 03 degrees 50 minutes 36 seconds West a distance of 71.10 feet from an iron pin set at the northeast corner of Tract 3 of Smyrna Market Village); and running thence along property now or formerly owned by the City of Smyrna, the following courses and distances:

South 86 degrees 09 minutes 24 seconds West a distance of 224.92 feet to an iron pin set; (said iron pin set also being located North 03 degrees 50 minutes 36 seconds West a distance of 71.10 feet from an iron pin set at the northwest corner of Tract 3 of Smyrna Market Village)

North 03 degrees 50 minutes 36 seconds West a distance of 75.83 feet to an iron pin set;

North 86 degrees 09 minutes 24 seconds East a distance of 224.92 feet to an iron pin set;

South 03 degrees 50 minutes 36 seconds East a distance of 75.83 feet to an iron pin set and THE TRUE POINT OF BEGINNING;

EXHIBIT "B"

Percentage Undivided Interest In And To The Common Elements

UNIT #	APPROXIMATE SQUARE FOOTAGE	PERCENTAGE INTEREST
	<b>RESIDENTIAL BUILDING #4</b>	
1	2400	4.84
2	2400	4.84
3	2400	4.84
4	2400	4.84
5	2400	4.84
6	2400	4.84
7	2400	4.84
8	2400	4.84
	<b>RESIDENTIAL BUILDING #3</b>	
9	2400	4.84
10	2400	4.84
11	2400	4.84
12	2400	4.84
13	2400	4.84
14	2400	4.84
15	2400	4.84
16	2400	4.84
	<b>COMMERCIAL BUILDING #4</b>	
1-2	1264	2.57
3-4	1461	2.95
5-6	1436	2.91
7-8	1406	2.85
	<b>COMMERCIAL BUILDING #3</b>	
9-10	1264	2.57
11-12	1436	2.91
13-14	1461	2.95
15-16	1406	2.85
<b>TOTALS</b>	<b>49,534</b>	<b>100%</b>

**EXHIBIT "C"**

**BYLAWS**

**OF**

**SMYRNA MARKET VILLAGE CONDOMINIUM ASSOCIATION, INC.**

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**BYLAWS**  
**OF**  
**SMYRNA MARKET VILLAGE CONDOMINIUM ASSOCIATION, INC.**

**Article I.**  
**General**

Section 1. **Applicability.** These Bylaws provide for the self-government of Smyrna Market Village Condominium Association, Inc., in accordance with its Articles of Incorporation filed with the Secretary of State of the State of Georgia and the Declaration of Condominium for Smyrna Market Village Residential and Commercial Condominium, being recorded in the Cobb County, Georgia land records ("Declaration").

Section 2. **Name.** The name of the corporation is Smyrna Market Village Condominium Association, Inc. ("Association").

Section 3. **Definitions.** The terms used herein shall have their generally accepted meanings or such meanings as are specified in the Declaration.

Section 4. **Membership.** Every Person who is the record owner of a fee or undivided fee interest in any Unit that is subject to the Declaration shall be deemed to have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership

Section 5. **Voting.** The initial number of votes shall be thirty two (32), of which sixteen (16) shall be allocated to the initial Residential Units and sixteen (16) shall be allocated to the initial Commercial Units. The votes allocated to the Residential Units and to the Commercial Units shall be allocated to each Unit in the manner described in the Declaration. The votes of each member shall be exercised as the member determines and advises the Secretary of the Association prior to any meeting. In the absence of such advice, such member's vote shall be suspended if more than one Person seeks to exercise it.

Any votes which will materially modify the general appearance of the Project (as defined in that certain Declaration of Covenants, Conditions, Easements and Restrictions for Smyrna Market Village, recorded in the Cobb County, Georgia Real Estate Records on or about February 7, 2002 (as amended through the date hereof, the "Master Declaration")) from the Plans and Specs (as defined in the Master Declaration) or which will materially adversely affect the rights of owners of the Residential Units shall require a majority of the votes of the owners of the Residential Units. Likewise, any votes which will materially modify the general appearance of the Project from the Plans and Specs (as defined in the Master Declaration) or which will materially adversely affect the rights of owners of the Commercial Units shall require the approval of the owner of the applicable Commercial Unit and a majority of the votes of the owners of the Commercial Units.

Section 6. **Purpose.** The Association shall have the purpose of fulfilling certain responsibilities set forth in the Declaration, establishing the means and methods of collecting assessments to defray its expenses, and paying certain amounts to the Master Association (as defined in the Master Declaration), all pursuant to the Declaration and performing all of the other acts that may be required to be performed by the Association pursuant to the Georgia Nonprofit Corporation Code and the Declaration. Except as to those matters which the Declaration or the Georgia Nonprofit Corporation Code specifically require to be performed by the vote of the Association membership, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

Section 7. **Declarant.** Declarant shall initially mean and refer to John Wieland Homes and Neighborhoods, Inc. Upon the acquisition of a Commercial Unit by Smyrna Market Village, LLC, or its designee, the term "Declarant" shall mean and refer to John Wieland Homes and Neighborhoods, Inc. and Smyrna Market Village, LLC, and their successors-in-title and assigns, provided that, in an instrument of conveyance to or any other document involving any such successor-in-title or assign, such successor-in-title or assign is designated as "Declarant" hereunder by the grantor/maker of such conveyance or document, which grantor/maker shall be a "Declarant" hereunder at the time of such conveyance or execution of such document; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to the Condominium, there shall be only two Persons (for so long as John Wieland Homes and Neighborhoods, Inc. owns a Residential Unit and Smyrna Market Village, LLC or its designee owns a Commercial Unit and, thereafter there shall be only one Person so entitled) entitled to exercise the rights and powers of "Declarant" hereunder at any one point in time. Except as otherwise provided in the Declaration or these Bylaws, during such period as there shall be more than one Declarant, any act or decision of Declarant (or their affiliates) shall require the written consent or act of both parties comprising "Declarant," provided, however, nothing contained herein or in the Declaration, nor the acts of the Declarants, shall be construed as creating a partnership or joint venture between the Declarants. At such time as John Wieland Homes and Neighborhoods, Inc. no longer owns a Residential Unit, it and any successor-in-title or assign (other than Smyrna Market Village, LLC or its successor-in-title or assign) shall cease to be a Declarant and thereafter the sole Declarant shall be Smyrna Market Village, LLC or its successor-in-title or assign.

## **Article II.**

### **Meetings of Members**

Upon the conveyance of any Commercial Unit to Smyrna Market Village, LLC or its designee ("SMV"), SMV shall become a member. Each entity member shall designate one representative which shall be an officer, director or other designated individual to represent the entity member at meetings of the Association. The annual meeting of the members shall be held at a date, time and location during the fourth quarter of each year that coincides with a regularly scheduled Board meeting. Special meetings of the members shall coincide with meetings of the Board. A quorum shall consist of members owning more than fifty percent (50%) of the votes allocated to the Residential Units and members owning more than fifty percent (50%) of the

votes allocated to the Commercial Units. It shall be the duty of the Secretary of the Association to mail or deliver to each member at its address of record a notice of each annual or special meeting at least ten (10) days prior to such meeting. Any member may, at any time, in writing, waive notice of any meeting of the members and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the members shall also constitute a waiver of notice by the member of the time and place of such meeting. If all members are present at any meeting of the members, no notice shall be required and any business may be transacted at such meeting.

**Article III.**  
**Board of Directors**

A. **Composition and Selection.**

Section 1. **Composition.** The affairs of the Association shall be governed by a Board of Directors.

Section 2. **Directors Appointed by Declarant.** Declarant shall have the right to appoint or remove all members of the Board of Directors and all officers of the Association until such time as the first of the following events shall occur: (a) such date as of which Declarant no longer owns any portion of the Project; or (b) the surrender by Declarant in writing of the authority to appoint and remove Directors and officers of the Association, which surrender may not occur before December 31, 2003 without the written consent of Smyrna Market Village, LLC, or (c) the seventh (7th) anniversary of the date that the first Unit is conveyed to a party that is not, and does not in connection with such conveyance become, a Declarant. Each member and each Owner, by acceptance of a deed to or other conveyance of a Unit, vests in Declarant this authority to appoint and remove Directors and officers of the Association. The Directors and officers appointed by the Declarant need not be Owners or residents in the Project.

Section 3. **Number of Directors and Selection.** The Board shall initially consist of two (2) Directors. At such time as Smyrna Market Village, LLC or its designee shall acquire one or more Commercial Units, Smyrna Market Village, LLC or its designee (which designation shall be in writing and shall specifically state its intent to designate its rights as Declarant under this Section 3) shall have the right (aa) to designate an equal number of Directors and thereafter the Board shall consist of at least two(2) and not more than four (4) Directors as determined by the Declarant for so long as it has the rights set forth in Section 2 of this Article III and (bb) to remove any of the officers and in the case any officer is so removed its replacement shall be selected by a majority of the Directors. During such period as both John Wieland Homes and Neighborhoods, Inc. and SMV are Declarants, each of them shall have the right to select one half of the Directors. Thereafter, until the first of the events set forth in clause (a), (b) and (c) in Section 2 of this Article III shall occur with respect to SMV, SMV shall have the sole power to elect and remove Directors and officers. After the first to occur of said events (a), (b) and (c) with respect to SMV (or its designee) as Declarant, (i) if neither of Parcels 5 and 6 [Parcels 5 and 6 being the two parcels of land described in Exhibit "D" to the Declaration] have been submitted to the Condominium, the Board shall consist of four (4) Directors (2 for Parcel 3 and 2 for Parcel 4 [Parcels 3 and 4 being the two parcels of land described in Exhibit "A" to the Declaration]);



provided, however, that if either such Parcel shall be developed into Residential Unit(s) and a Commercial Unit(s), then such Parcel shall select two (2) Directors, one to be selected by a Majority of the Owners of the Residential Unit(s) in that building and one to be selected by a Majority of the Owners of the Commercial Unit(s) in that building, and (ii) if one or both of Parcels 5 and 6 have been submitted to the Condominium, the Board shall also be increased by two (2) Directors for each of Parcel 5 and 6 if such Parcel has been submitted to the Condominium; provided, however, that if either such Parcel shall be developed into Residential Unit(s) and a Commercial Unit(s), then such Parcel shall select two (2) Directors, one to be selected by a Majority of the Owners of the Residential Unit(s)"in that building and one to be selected by a Majority of the Owners of the Commercial Unit(s) in that building. A party may be elected to serve as Director in more than one of the Director positions, in which case, such Director shall have a separate vote with respect to each such position.

Section 4. **Term of Office.** Each Director shall serve a term of one (1) year. The members of the Board of Directors shall hold office until their respective successors shall have been selected as provided herein.

Section 5. **Removal of Members of the Board of Directors.** At such time as the Declarant no longer has the right to elect and remove Directors, persons serving on the Board of Directors may be removed, with or without cause, by the parties (e.g., the owners of the Residential Units on Parcel 3) which selected such Director, and a successor may then and there be selected, by such parties to fill the vacancy thus created. This Section shall not apply to directors appointed by Declarant.

Section 6. **Vacancies.** Vacancies in the Board caused by any reason, except the removal of a Director, shall be filled in the same manner as a successor to a removed Director. Any successor selected shall hold office for the remainder of the term of the Director being replaced.

Section 7. **Compensation.** Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a Majority vote of the members. Directors may be reimbursed for the expenses incurred in carrying out their duties as Directors upon Board approval of such expenses. Directors also may be given nominal gifts or tokens of appreciation by the Association for recognition of services performed, such gifts not to exceed a value of \$100.00 per calendar year.

Section 8. **Director Conflicts of Interest.** Nothing herein shall prohibit a Director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as Director, provided that the Director's interest is disclosed to the Board and the contract is approved by a Majority of the Directors who are at a meeting of the Board of Directors at which a quorum is present, excluding the Director with whom the contract is made. The interested Director shall not count for purposes of establishing a quorum of the Board. The interested Director shall be entitled to be present at the meeting at which the proposed contract is discussed, but the Director must leave the room during the discussion on such matter. Notwithstanding anything herein, the Directors during the period of Declarant control shall be authorized on behalf of the Association to enter into contracts with the Declarant

and its affiliates as set forth in Section 20 of the Declaration; provided, however, that any contract with John Wieland Homes and Neighborhoods, Inc. or an affiliate, shall, at the option of SMV, terminate on such date that Smyrna Market Village, LLC or its designee acquires a Commercial Unit.

**B. Meetings.**

Section 1. **Regular Meetings.** Regular Board meetings may be held at such time and place as determined by the Board, but at least once every three (3)"months.

Section 2. **Special Meetings.** Special Board meetings may be called by the President on three (3) days' notice to each Director given by mail, in person, by telephone, or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting. Special Board meetings shall be called by the President, Vice President, Secretary, or Treasurer in like manner and on like notice on the written request of at least two (2) Directors.

Section 3. **Waiver of Notice.** Any Director may, at any time, in writing, waive notice of any Board meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any Board meeting shall also constitute a waiver of notice by him or her of the time and place of such meeting. If all Directors are present at any Board meeting, no notice shall be required and any business may be transacted at such meeting.

Section 4. **Conduct of Meetings.** The President shall preside over all Board meetings, and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. The presence of Directors entitled to cast at least one-half of the votes of the Board shall constitute a quorum for the transaction of business. Any Directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other.

Section 5. **Open Meetings.** All Board meetings shall be open to ail Owners, but Owners other than Directors may not participate in any discussion or deliberation unless expressly authorized by the Board. Notwithstanding the above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session. The Board may order the removal of any meeting guest (including, without limitation, an Owner) who, in the Board's opinion, either disrupts the conduct of business at the meeting or fails to leave the meeting upon request after an announcement of reconvening in executive session.

Section 6. **Action Without a Meeting.** Any Board action required or permitted to be taken at any meeting may be taken without a meeting if a consent, in writing, setting forth the action so taken shall be signed by all of the Directors. The written consents shall be filed with the minutes of the Board.

C. **Powers and Duties.**

Section 1. **Powers and Duties.** The Board of Directors shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Condominium and may do all such acts and things as are not by the Declaration, the Articles of Incorporation of the Association, or these Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Bylaws, the Board of Directors shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget, in which there shall be established the contribution of each member to the Association expenses, and communicating such information to the Owners;

(b) making assessments to defray the Association's expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments, if any, of the annual assessment;

(c) providing for the operation, care, upkeep, and maintenance of all of the Common Elements;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Common Elements and other Association property and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in O.C.G.A. Section 14-3-302, and using the proceeds to administer the Association and other permitted purposes;

(f) making and amending rules and regulations and imposing sanctions for violation thereof, including reasonable monetary fines;

(g) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions and improvements to, or alterations of, the Common Elements in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the members and/or Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the costs of all services rendered to the Association, or its members and not directly chargeable to specific Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred; and

(m) contracting with any Person for the performance of various duties and functions (including, but not limited to, landscaping, security, property management, road and other maintenance).

The Board shall have the power to enter into common management agreements with trusts, condominium associations, or other associations or corporations. Any and all functions of the Association, including, but not limited to, the collection of assessments shall be fully transferable by the Board, in whole or in part, to any other entity.

Section 2. **Management Agent.** The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board, to perform such duties and services as the Board of Directors shall authorize. Declarant or an affiliate of Declarant may be appointed as managing agent or manager. The Board shall use reasonable efforts in any management contract to provide for a termination right in such contract, with or without cause and without penalty, upon no more than ninety (90) days written notice, and for a term not in excess of one (1) year.

Section 3. **Liability and Indemnification of Officers, Directors and Committee Members.** The Association shall indemnify every officer, Director, and committee member (including Directors, officers, and committee members appointed by Declarant during the period of Declarant control) against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such officer, Director or committee member in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, Director or committee member, whether or not such person is an officer, Director or committee member at the time such expenses are incurred, subject to the limitations below. The officers, Directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer, Director or committee member in the performance of his or her duties, except for his or her own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, Directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers, Directors and committee members may also be members of the Association), and the Association shall indemnify and forever hold each such officer, Director or committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any

other rights to which any officer, Director or committee member or former officer or Director may be entitled. The Association shall maintain, as an Association expense, general liability and, if reasonably available, officers' and Directors' liability insurance to fund this obligation, in such amounts as the Board shall in good faith deem adequate, and the insurance shall be written as provided in the Declaration.

D. **Committees.**

Section 1. **General.** There shall be such committees' as the Board shall determine, with the powers and duties that the Board shall authorize.

Section 2. **Service on Committees.** Unless otherwise provided in these Bylaws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board of Directors. Any committee member may be removed by the President or the Board of Directors with or without cause at any time and with or without a successor being named.

**Article IV.**  
**Officers**

Section 1. **Designation.** The principal officers of the Association shall be the President, the Secretary, and the Treasurer. The President and Secretary shall be elected by and from the Board of Directors. The Board of Directors shall also have the right to elect a Vice President from the board of Directors. The Treasurer shall be elected by the Board, but need not be a Board member. The Board may appoint one or more Assistant Treasurers, Assistant Secretaries, and such other subordinate officers as in its judgment may be necessary. Any assistant or subordinate officers shall not be required to be Board members. Except for the offices of Secretary and Treasurer, which may be held by the same person, no person may hold more than one (1) office.

Section 2. **Election of Officers.** The Association officers shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the members and shall hold office at the pleasure of the Board and until a successor is elected.

Section 3. **Removal of Officers.** Upon the affirmative vote of a Majority of the Board of Directors, any officer may be removed, either with or without cause, and a successor may be elected.

Section 4. **Vacancies.** A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

Section 5. **President.** The President shall be the chief executive officer of the Association and shall preside at all Association and Board meetings. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the

power to appoint committees from time to time as he or she may in his or her discretion decide is appropriate to assist in the conduct of the affairs of the Association.

Section 6. **Vice President**. A Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities provided for the President when so acting.

Section 7. **Secretary**. The Secretary or an Assistant Secretary shall keep the minutes of all Association and Board meetings and shall have charge of such books and papers as the Board may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under Georgia law.

Section 8. **Treasurer**. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

Section 9. **Other Officers**. Other offices may be created by the Board, and the parties holding such offices shall have such titles and duties as are defined by the Board.

## **Article V.** **Rule Making and Enforcement**

Section 1. **Authority and Enforcement**. To the extent within the control of the Association, the Condominium shall be used only for those uses and purposes set out in the Declaration. The Board of Directors shall have the authority to make, modify, repeal and enforce reasonable rules and regulations governing the conduct, use, and enjoyment of Units and the Common Elements; provided, copies of all such rules and regulations shall be furnished to all Owners and Occupants. Any rule or regulation may be repealed by the affirmative vote or written consent, or any combination thereof, of Owners representing at least a Majority of the votes of the Owners of the Residential Units and a Majority of the votes of the Owners of the Commercial Units and, for so long as the Declarant has the right to appoint and remove Directors as provided herein, the consent of Declarant.

Every member, Owner and Occupant shall comply with the Declaration, Bylaws and rules and regulations of the Association, as well as any similar documents governing the Condominium, as may be applicable, and any lack of compliance shall entitle the Association and, in an appropriate case, a member and one or more aggrieved Owners to take action to enforce the terms of any or all of the foregoing.

The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the real property of the Person fined, and to suspend a member's right to vote and an

Owner's right to use the Common Elements for violation of any duty imposed under the Declaration, these Bylaws, any rules and regulations duly adopted hereunder, or any similar document governing the Condominium, as may be applicable; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a Unit. If any Occupant violates any of the foregoing and a fine is imposed, the fine may be imposed against the Owner and/or Occupant, subject to Section 2 below. The failure of the Board to enforce any provisions of any of the foregoing shall not be deemed a waiver of the right of the Board to do so thereafter.

Section 2. **Fining and Suspension Procedure.** The Board shall not impose a fine (a late charge shall not constitute a fine) or suspend the right to vote or to use the Common Elements unless and until the Board has sent or delivered written notice to the violator as provided in subsection (a) below.

(a) **Demand.** Written demand to cease and desist from an alleged violation shall be served by the Board upon the alleged violator specifying:

- (i) the alleged violation;
- (ii) the action required to abate the violation; and

(iii) a time period, not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or a statement that any further violation of the same rule may result in the imposition of a fine, if the violation is not continuing. The Board may demand immediate abatement in such circumstances which, in the Board's determination, pose a danger to safety or property.

(b) **Notice.** Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same rule is subsequently violated, the Board may, upon notice stating the nature of the violation, impose a fine. 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 in such cases.

Section 3. **Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Declaration, the Bylaws, the rules and regulations, and any similar document governing the Condominium by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) 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 Section 2 of this Article. In any such action, to the maximum extent permissible, the Person responsible for the violation for which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

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

and regulations, or any similar document governing the Condominium. Except in emergency situations, situations involving repeat violations for which notice hereunder already has been given, or as otherwise specified in the Declaration, at least two (2) days written notice shall be given to the violator before any item of construction is altered or removed by the Association. All costs of self-help or of otherwise enforcing the foregoing, including reasonable attorney's fees actually incurred, shall be assessed against the violator. Additionally, the Association shall have the authority to record in the land records where the Condominium is located a notice of violation identifying an uncured violation of the foregoing.

## **Article VI.** **Miscellaneous**

Section 1. **Notices.** Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States certified mail, first class postage prepaid, return receipt requested:

(a) If to a Unit Owner, at the address which the Unit Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Unit of such Owner;

(b) If to an Occupant, at the address of the Unit occupied; or

(c) If to the Association, the Board or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary.

Section 2. **Severability.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws or the Declaration.

Section 3. **Captions.** The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof.

Section 4. **Gender and Grammar.** The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 5. **Fiscal Year.** The fiscal year of the Association may be set by Board resolution or, in the absence thereof, shall be the calendar year.

Section 6. **Financial Review.** A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board. However, after having received the Board's financial review at the annual meeting, the members may by unanimous vote require that the Association accounts be audited as an Association expense by an



independent accountant. Upon written request of any institutional holder of a first Mortgage on a Unit and upon payment of all costs associated therewith, such holder shall be entitled to receive a copy of the audited financial statements of the Association within ninety (90) days of the date of the request.

Section 7. **Conflicts.** The duties and powers of the Association shall be those set forth in the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, and the Articles of Incorporation of the Association, together with those reasonably implied to affect the purposes of the Association. If there are conflicts or inconsistencies between such, then the provisions of the Georgia Nonprofit Corporation Code (as may be applicable), the Declaration, the Articles of Incorporation of the Association and these Bylaws, in that order, shall prevail.

Section 8. **Amendment.** The provisions of the Declaration applicable to amendment of that instrument shall apply to any amendment of these Bylaws. No amendment shall become effective until it is certified by the President and Secretary of the Association and recorded in the Cobb County, Georgia land records. Any amendment duly certified and recorded (containing any additional signatures required by the Declaration) shall be conclusively presumed to have been duly adopted in accordance with the Declaration and Bylaws.

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

Section 9. **Books and Records.**

(a) All members of the Association and any institutional holder of a first Mortgage on a Unit shall be entitled to inspect the following records at a reasonable time and location specified by the Board, upon written request at least ten (10) business days before the date on which the member wishes to inspect and copy:

- (i) the Association's Articles of Incorporation and all amendments to them currently in effect;
- (ii) the Association's Bylaws and all amendments to them currently in effect;
- (iii) resolutions adopted by either the Association's members or Board of Directors increasing or decreasing the number of Directors or the classification of Directors, or relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members;
- (iv) the minutes of all meetings of members and records of all actions approved by the members for the past three (3) years;
- (v) all written communications to members generally within the past three (3) years, including the financial statements furnished for the past three (3) years;

(vi) a list of the names and business or home addresses of the Association's current Directors and officers; and

(vii) the Association's most recent annual report delivered to the Secretary of State of the State of Georgia.

(b) A member may inspect and copy the following records upon written notice at least ten (10) business days before the date on which the member wishes to inspect and copy only if the member's demand is made in good faith and for a proper purpose that is reasonably relevant to the member's legitimate interest as a member; the member describes with reasonable particularity the purpose and the records the member desires to inspect; the records are directly connected with this purpose; and the records are to be used only for the stated purpose:

(i) excerpts from minutes of any Board meeting, records of any action of a committee of the Board while acting in place of the Board on behalf of the Association, minutes of any meeting of the members, and records of action taken by the members or the Board without a meeting, to the extent not subject to inspection under subsection (a) of this Section;

(ii) accounting records of the Association; and

(iii) the membership list only if for a purpose related to the member's interest as a member.

The Board may impose a reasonable charge, covering the cost of labor and material and other copying costs actually incurred for copies of any documents provided to the member.

Notwithstanding anything to the contrary herein, the Board may limit or preclude member inspection of confidential or privileged documents, including attorney/client privileged communications, executive session meeting minutes, and financial records or accounts of other members. Minutes for any Board or Association meetings do not become effective and an official Association record until approved by the Board or Association membership, as applicable, at a subsequent meeting.

Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of the Association.

The term "including" shall be deemed followed by the words "without limitation" unless already followed by words of similar import.

**EXHIBIT "D"**

**Description of Additional Property**

*(SEE ATTACHED)*

s:\legal\anx\georgia\smyrna market village\condominium declaration.final2.doc  
rev. 093002

**EXHIBIT "D"**

**LEGAL DESCRIPTION OF TRACT 5**  
**(Amendment Agreements)**

All that tract of land lying and being in land lot 521, 17th District, 2nd Section, in the City of Smyrna, Cobb County, Georgia and being described as follows:

BEGINNING at the point where the former southerly right-of-way line of the apparently abandoned West Spring Street intersects the former westerly right-of-way line of Memorial Place; THENCE North 86°34'48 East a distance of 2.04 feet along said southerly right-of-way of West Spring Street to a point on the westerly right-of-way line of Atlanta road, THENCE along said right-of-way of Atlanta Road North 16°53'59" West for a distance of 16.52 feet; THENCE leaving said right-of-way and running South 86°09'24" West for a distance of 159.57 feet; THENCE South 86°09'24" West for a distance of 15.17 feet; THENCE South 86°09'24" West for a distance of 250.96 feet; THENCE South 86°09'24" West for a distance of 39.54 feet; THENCE North 03°50'36" West for a distance of 56.13 feet to an iron pin set and the TRUE POINT OF BEGINNING.

THENCE South 86°09'24" West for a distance of 75.86 feet to an iron pin set; THENCE North 03°50'36" West for a distance of 146.00 feet to an iron pin set; THENCE North 86°09'24" East for a distance of 75.86 feet to an iron pin set; THENCE South 03°50'36" East for a distance of 146.00 feet to an iron pin set and the TRUE POINT OF BEGINNING.

Said tract being as shown on that certain ALTA/ASCM Land Title Survey of Smyrna. Market Village prepared by Post, Buckley, Schuh & Jernigan, Inc., dated January 15, 2002, Job No. 06-1015.00, for Chicago Title Insurance Company, Security Exchange Bank, Smyrna Market Village, LLC, GKJ Development, LLC and John Wieland Homes and Neighborhoods, Inc., last revised February 22, 2002.

Said tract of land containing 11,076 square feet

TOGETHER WITH all casements and other rights set forth in that certain Declaration of Covenants, Conditions, Easements and Restrictions for Smyrna Market Village, dated as of January 31, 2002, recorded in Deed Book 134S9, Page 5496, Cobb County, Georgia Records. .

**EXHIBIT D**  
**CONT.**

**LEGAL DESCRIPTION OF TRACT 6**  
**(Amendment Agreements)**

All that tract of land lying and being in land lots 521 and 522, 17th District, 2nd Section, in the City of Smyrna, Cobb County, Georgia and being described as follows:

BEGINNING at the point where the former southerly right-of-way line of the apparently abandoned West Spring Street intersects the formerly westerly right-of-way line of Memorial Place, THENCE North 86°34'48" East a distance of 2.04 feet along said southerly right-of-way of West Spring Street to a point on the westerly right-of-way of Atlanta Road; THENCE along said right-of-way of Atlanta Road North 16°53'59" West for a distance of 16.52 feet; THENCE leaving said right-of-way and running South 86°09'24" West for a distance of 159.57 feet; THENCE South 86°09'24" West for a distance of 15.17 feet; THENCE South 86°09'24" West for a distance of 250.96 feet; THENCE South 86°09'24" West for a distance of 39.54 feet; THENCE South 03°50'36" East for a distance of 56.13 feet to an iron pin set and the TRUE POINT OF BEGINNING.

THENCE South 03°50'36" East for a distance of 132.00 feet to an iron pin set; THENCE South 86°09'24" West for a distance of 76.32 feet to an iron pin set; THENCE North 03°50'36" West for a distance of 132.00 feet to an iron pin set; THENCE North 86°09'24" East for a distance of 76.32 feet to an iron pin set and the TRUE POINT OF BEGINNING.

Said tract being as shown on that certain ALTA/ASCM Land Title Survey of Smyrna Market Village prepared by Post, Buckley, Schuh & Jernigan, Inc., dated January 15, 2002, Job No. 06-1015.00, for Chicago Title Insurance Company, Security Exchange Bank, Smyrna Market-Village, LLC, GKJ Development, LLC and John Wieland Homes and Neighborhoods, Inc., last revised February 22, 2002.

Said tract of land containing 10,074 square feet.

TOGETHER WITH all easements and other rights set forth in that certain Declaration of Covenants, Conditions, Easements and Restrictions for Smyrna Market Village, dated as of January 31, 2002, recorded in Deed Book 13489, Page 5496, Cobb County, Georgia Records.

# TOWNHOME & CONDOMINIUM

## DESIGN GUIDELINES

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Guideline No. 9.	Satellite Dishes

\* REQUEST FOR MODIFICATION REVIEW FORM

## APPLICATION INFORMATION

1. A complete Form must be submitted through the Covenants Committee for all modifications. The verbal approval of any sales agent, John Wieland Homes and Neighborhoods' employee, association representative is not sufficient. All modification approvals must be in writing. When plans are required, they must be submitted with the Form. A Form is attached to these guidelines. Additional Forms are available from the John Wieland Homes and Neighborhoods Sales Office or the Covenants Committee.
2. The Covenants Committee ordinarily meets on a regular basis, except when a holiday postpones a meeting. Owners generally receive a response to their request within ten days after their meeting at which the request is considered.

## COVENANT ENFORCEMENT PROCEDURES

1. Apparent covenant violations - as reported by any source - must be submitted in writing to the Covenants Committee to be referred for appropriate action.
2. If a violation cannot be resolved by the Covenants Committee, the Advisory Committee will refer the matter to the Board of Directors who will send a letter requesting compliance and/or submissions for approval.
3. If necessary, follow-up correspondence requesting immediate action will be sent. Possible sanctions include: (i) suspension of the right to vote; (ii) suspension of the right to use the recreational facilities; or (iii) recordation of notice of covenant violation with the superior court; (iv) imposition of a fine on a per violation and/or per day basis; (v) commencement of legal procedures; (vi) correction of the violation by the association with all costs charged to the violator; and/or (vii) filing a lien for all fines and costs to correct the violation.

**TOWNHOME & CONDOMINIUM  
NEIGHBORHOOD ASSOCIATION GUIDELINES**

GUIDELINE NO. 1

Pets

- 1.1 Pets shall be restrained on a leash at all times when allowed outside of the unit, accompanied by the pet owner at all times.
- 1.2 Pets are not permitted to run unattended in the Common Area nor may they be tied up in the common area. Pets are not to be left unattended.
- 1.3 Pet owners must immediately clean up after their animal at all times.
- 1.4 Any pet that is determined to be, in the sole opinion of the Board of Directors, an unreasonable nuisance to the community due to either noise or odor shall be subject to removal from the community.
- 1.5 Pet owners are responsible for any damage that is caused to the common area by their pet(s), the repairs for which shall be made by the Association and assessed to the Unit Owner.

GUIDELINE NO. 2

Patios Exterior Decorative Objects, Front Porch Flower Pots, Grills, Etc.

- 2.1 A Form must be submitted for all exterior decorative objects, both natural and man-made. Exterior decorative objects include items such as bird baths, wagon wheels, sculptures, fountains, artificial flowers/plants, rocks, free-standing poles of all types, flag poles, and items attached to approved structures.
- 2.2 Front doors and entry area decorations must be tasteful and in keeping with the style and colors of the house. Plants and flowers in pots must always be neat and healthy. Neatly maintained front porch flower pots (maximum of 4) that match exterior color containing evergreens/flowers do not require submission of a Form.
- 2.3 Objects will be evaluated on criteria such as siting, proportion, color and appropriateness to surrounding environment.
- 2.4 Patios may not be used as storage areas nor in any way distract from the appearance from the building.
- 2.5 Residents shall not dry or air clothes on the patio areas or on lines or poles hung on the



exterior of any building.

- 2.6 No awnings or other projections shall be attached to the outside walls of the building unless specifically approved by the Board of Directors. No blinds, shades or screens shall be attached to, hung, or used in conjunction with any patio, window or door of the exterior of the unit without the prior written consent of the Board of Directors.
- 2.7 All residents and occupants shall use care in securing items or fixtures kept on patio areas to ensure items are not blown from it.
- 2.8 Patio areas shall not be used as an animal control area if such confinement causes the animal to create a nuisance either by noise or odor that in the sole discretion of the Board is an unreasonable nuisance to the living enjoyment of others.
- 2.9 State or local ordinances may govern the use of gas and charcoal grills on patios, balconies, or decks, by residents of multi-family buildings. In some locations, these grills may be completely banned. In locations that allow these grills on patios, balconies, or decks, at no time during use may the grill be closer to any structure than six (6) feet. At no time during use may the grill be positioned under another balcony or deck. Grills must be stored in an acceptable manner when not in use.

### GUIDELINES NO. 3

#### Trash Collection and Removal

- 3.1 If the Association has contracted with a waste removal provider for the servicing of all Townhome/condominium units within the Neighborhood, the expense for such service shall be included as a common expense.
- 3.2 All refuse must be placed in a trash receptacle (or personally provided trash container) that contains a lid that will protect the trash from being blown throughout the community prior to pick up. All recycling bins are to be guarded with some type of weighted material that will prohibit the blowing of recycling goods. All trash receptacles and recycle bins shall be stored inside the garage, except for after 6 p.m. the night before or the day of service.
- 3.3 All additional refuse in excess of that which fits within the designated container shall be the sole responsibility of the Owner for removal and shall not be charged to the Association (i.e. furniture, appliances, carpet, etc.)

## GUIDELINE NO. 4

### Exterior Landscaping and Maintenance

- 4.1 Sidewalks and entrances must not be obstructed.
- 4.2 No owner or occupant shall plant or place flowers, plants, gardens, hanging baskets or shrubbery outside of their individual courtyard unless prior written consent is given by the Board of Directors except for those placed in pots on the front patio or deck.
- 4.3 Vehicular traffic across the lawn and landscaped areas is not permitted. The expense to repair areas due to repeated foot traffic or vehicular access will be assessed to the Owner causing said damage.

## GUIDELINE NO. 5

### Signage & Flags

- 5.1 The Board of Directors shall approve all signage prior to installation for appropriateness, size, and placement. Signage that may be considered acceptable shall include:
  - One sign placed inside a window offering a unit for sale or lease, not larger than four (4) square feet. Sign must be aesthetically pleasing in color and design with appropriate wording or,
  - One small decal (not larger than 4" x 4") may be placed on windows or the exterior of the unit indicating a security system exists on the property.
- 5.2 No flags or banners shall be permitted. This is not intended to limit or prohibit the display of the current U.S. flag; however, lighting of a flag is not permitted. Therefore, flags shall be required to be removed daily in accordance with proper etiquette for the display of a national flag.

## GUIDELINE NO. 6

### Lighting/Air Conditioning Units

- 6.1 The Association shall be responsible for common area lighting. All lights controlled by an interior switch shall be maintained by the individual and resident shall be responsible for replacing the light bulb as needed.
- 6.2 No patio or porch area shall be enclosed by means of screening or otherwise unless specifically approved by the Board of Directors.
- 6.3 Window air conditioning units shall not be permitted on any Unit.

## GUIDELINE NO. 7

## Insurance

- 7.1 The Association's Insurance Policy does not cover the contents of the unit or liability within it. Each Townhome/condominium owner should arrange for insurance coverage for all losses and risks growing out of the ownership and/or occupancy of the premises.
- 7.2 Any and all insurance claims pertaining to the Association's policy are to be filed through the Board of Directors.
- 7.3 All damages due to negligence of the owner will be the responsibility of the owner, and the owner will pay the deductible. Damages occurring by no fault of the owner will be the responsibility of the Association and the Association will pay the deductible. It is the Board's responsibility to determine "negligence", in which case the owner presents his/her case before the Board in a hearing. All decisions made by the Board in this hearing are binding.

## GUIDELINE NO. 8

### Vehicles and Parking

- 8.1 Roads within the community are designated as private streets. Vehicles shall not be parked on any street within the Community. Vehicles shall park in garages. If more vehicles are owned than garage space is available, vehicles may be parked in the driveway. Temporary parking (four hours or less) is allowed if not a nuisance to neighbors or impediment to traffic flow. Homeowners are responsible for guest parking and must ensure that guests park in a safe manner and do not impede access to other driveways and traffic.
- 8.2 All vehicles shall meet local noise requirements. All vehicles must have mufflers in good working condition.
- 8.3 No boats, trailers, RV's or commercial vehicles shall be parked in the neighborhood at any time except for the purpose of loading and unloading. No inoperative vehicle shall remain parked in the neighborhood for a period of longer than 24 hours. In both cases above, any such vehicle(s) shall not create an access problem to other residents nor shall such vehicles be parked unattended within the community (i.e. within fire lanes). Such vehicles are subject to the immediate removal (towing) at the owner's expense.
- 8.4 No mechanical work will be performed on vehicles in the subdivision except as can be provided within the enclosed garage of the unit, screening the sight, sounds and odors of such repairs. Such repair activity shall be limited to the necessary repairs of the resident's vehicles only and shall not extend to the repairs of vehicles not belonging to residents of the community.
- 8.5 Vehicles that are parked on subdivision property illegally, or without current license

plates, or have not been moved for a period of 48 hours or longer are in violation of the Covenants, and shall be determined abandoned and may be towed and/or ticketed.

## GUIDELINE NO. 9

### Satellite Dishes

No transmission antennas or satellite dishes of any kind, and no direct broadcast satellite ("DBS") antennas or multi-channel multi-point distribution service ("MMDS") antennas larger than one (1) meter in diameter, shall be placed, allowed or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board of Directors or its designee. DBS and MMDS antennas and satellite dishes one (1) meter or less in diameter and television broadcast service antennas may be installed after notification to Board of Directors only if reasonably screened and located as approved by the Board of Directors or its designee and installed in accordance with the rules and regulations of the Federal Communications Commission and of the Association, both as may be amended from time to time. However, the Board and Declarant reserve the right to (but shall not be obligated to) erect any type and size of master antenna, satellite dish or other similar master system for the benefit of the Community. Each Owner and Occupant acknowledges that this provision benefits all Owner's and Occupant's and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of any individual outdoor antenna or similar device would be the most cost-effective way to receive the signals sought to be received.

Antennas shall be located in a place shielded from view from the street or from other lots or units to the maximum extent possible; provided, however, that nothing in this rule would require installation in a location from which an acceptable quality signal may not be received. Typical installation locations would be (in this order), inside unit or under eaves of roof. This section does not permit installation on common property, even if an acceptable quality signal may not be received from an individually owned lot. Antennas shall be no larger nor installed higher than is absolutely necessary for reception of an acceptable-quality signal. Owners shall not permit their antennas to fall into disrepair or to become safety hazards.

Antennas situated on the ground and visible from the street or from other lots must be camouflaged by existing landscaping or fencing, if an acceptable quality signal may be received from such placement. If no such existing landscaping or screening exists, the Association may require antennas to be screened by new landscaping or screening of reasonable cost.

Antennas, masts and any visible wiring must be painted to match the color of the structure to which it is installed, if acceptable quality signal may be received.

**SATELLITE DISH INSTALLATION NOTIFICATION**

Name \_\_\_\_\_ Date \_\_\_\_\_  
Address \_\_\_\_\_ Home Phone \_\_\_\_\_  
City/State/Zip \_\_\_\_\_ Office Phone \_\_\_\_\_  
Community \_\_\_\_\_ Lot/Block \_\_\_\_\_

Please provide the Covenants Committee with all information necessary to evaluate the request thoroughly and quickly. Notification must include, without limitation, the following information: site plan (including all dimensions), detailed description of installation location, and any other information as specifically required below or as required by the Design Guidelines approved for the community.

Description of Installation:

\_\_\_\_\_

Estimated Start Date \_\_\_\_\_ Estimated Completion Date \_\_\_\_\_

No transmission antennas or satellite dishes of any kind, and no direct broadcast satellite ("DBS") antennas or multi-channel multipoint distribution service ("MMDS") antennas larger than one (1) meter in diameter, shall be placed, allowed or maintained upon any portion of the Community, including any Lot, without the prior written consent of the Board of Directors or its designee. DBS and MMDS antennas and satellite dishes one (1) meter or less in diameter and television broadcast service antennas may be installed only if reasonably screened and located as approved by the Board of Directors or its designee and installed in accordance with the rules and regulations of the Federal Communications Commission and of the Association, both as may be amended from time to time. However, the Board and Declarant reserve the right to (but shall not be obligated to) erect any type and size of master antenna, satellite dish or other similar master system for the benefit of the Community. Each Owner and Occupant acknowledges that this provision benefits all Owner's and Occupant's and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of any individual outdoor antenna or similar device would be the most cost-effective way to receive the signals sought to be received.

Note: I understand and agree that no approval is necessary provided antenna installation follows the Association adopted guidelines. If not installed pursuant to these guidelines, it may be requested that satellite dish/antenna be relocated.

Neither John Wieland Homes and Neighborhoods, Inc., the Association Board of Directors, the Association Committee's nor their respective members, Secretary, successors, assigns, agents, representatives or employees shall be liable for damages or otherwise to anyone requesting approval of an architectural alteration by reason of mistake in judgment, negligence or non-feasance, arising out of any action with respect to any submission. The Architectural Review is directed toward review and approval of site planning, appearance and aesthetics. None of the foregoing assumes any responsibility regarding design or construction, including, without limitation, the structural integrity, mechanical or electrical design, methods of construction, or technical suitability of materials. I hereby release and covenant not to sue all of the foregoing from/for any claims or damages regarding this request or the approval or denial thereof.

By signing this, I will comply with all of the Association's rules for installing, maintaining, and using antennas. I assume liability for any damage to Association and other property that occurs due to antenna installation, maintenance and use.

If installation does not comply with the Association's rules, please provide 3 days and times which you will be available to meet and discuss the installation.

Owner's Signature \_\_\_\_\_ Date \_\_\_\_\_

Comments:

# REQUEST FOR MODIFICATION REVIEW

Name \_\_\_\_\_ Date \_\_\_\_\_

Address \_\_\_\_\_ Home Phone \_\_\_\_\_ Email \_\_\_\_\_

City/State/Zip \_\_\_\_\_ Office Phone \_\_\_\_\_

Community \_\_\_\_\_ Lot/Block \_\_\_\_\_

Please provide the Covenants Committee with all information necessary to evaluate the request thoroughly and quickly. Requests must include, without limitation, the following information: site plan (including all dimensions), color chips (if applicable), detailed description of request, list of materials, pictures (if applicable), and any other information as specifically required below or as required by the Design Guidelines approved for the community. Description of Modification Requested:

Estimated Start Date \_\_\_\_\_ Estimated Completion Date \_\_\_\_\_

Acknowledgment of Adjacent Homeowners (all homeowners sharing common boundary line): This acknowledgement will be considered by the Covenants Committee but will not be binding upon the Covenants Committee. No application will be considered unless this section is completed.

Signature \_\_\_\_\_ Lot (\_\_\_\_) Approve (\_\_\_\_) Disapprove (\_\_\_\_)

Signature \_\_\_\_\_ Lot (\_\_\_\_) Approve (\_\_\_\_) Disapprove (\_\_\_\_)

Signature \_\_\_\_\_ Lot (\_\_\_\_) Approve (\_\_\_\_) Disapprove (\_\_\_\_)

**Under each of the most common headings below, all the items listed must be submitted. Please refer to the Guidelines for other necessary information required for modifications such as detached structures, outdoor play equipment, pools, tennis courts, etc.:**

\_\_\_\_\_ **Patio or Walkway**

\_\_\_\_\_ Lot survey denoting location

\_\_\_\_\_ List of materials to be used

\_\_\_\_\_ **Exterior Decorative Objects, Front Porch Flower Pots, Lighting, Etc.**

\_\_\_\_\_ Description of object

\_\_\_\_\_ Location and picture or sketch of object

\_\_\_\_\_ Description and location of proposed lighting

\_\_\_\_\_ **Garden Plot**

\_\_\_\_\_ Location and size of garden

\_\_\_\_\_ Type of plants to be grown

\_\_\_\_\_ **Play Houses**

\_\_\_\_\_ Location (must have minimum visual impact on adjacent properties)

\_\_\_\_\_ Size and Sketch (limited to an area not to exceed 100 square feet)

\_\_\_\_\_ Materials (in most cases, material used must match existing materials of home)

\_\_\_\_\_ **Private Pool**

\_\_\_\_\_ Picture or drawing of pool type.

\_\_\_\_\_ Dimensions (maximum size 1,000 square ft.)

\_\_\_\_\_ Color (must be blue or white).

\_\_\_\_\_ Site plan denoting location.

\_\_\_\_\_ Type of lighting source.

\_\_\_\_\_ Landscape plan

\_\_\_\_\_ **Fencing**

\_\_\_\_\_ Picture or drawing of fence type.

\_\_\_\_\_ Dimensions (maximum height may not exceed 6 feet; maximum span between posts shall be ten feet; minimum post size shall be 4x4 inched; must have two 2x8 inch rails or three 2x6 inch horizontal rails per section).

\_\_\_\_\_ Color (wood - natural or painted to match trim; vinyl - white or painted to match trim; wrought iron - black).

\_\_\_\_\_ Site plan denoting location (fence may not be located closer to any street than rear edge of home. On corner lot, fence may not be closer to side street than building line of house. Please use copy of survey from your closing package).

\_\_\_\_\_ Crossbeam structure must not be visible from any street (must face inside toward yard).

\_\_\_\_\_ Materials (must be cedar, cypress, vinyl, # 2 grade or better pressure-treated wood, or aluminum).

\_\_\_\_\_ All nails, screws or fasteners shall be aluminum or hot-dipped galvanized.

\_\_\_\_\_ Concrete footing required for all fence posts.

**Exterior Landscaping and Maintenance**

\_\_\_\_\_ Landscape plan denoting plant material and location  
\_\_\_\_\_ Plat showing location of compost container

**Deck/Porch**

\_\_\_\_\_ Picture or Drawing (deck must match any existing deck).  
\_\_\_\_\_ Dimensions  
\_\_\_\_\_ Color (must be natural or painted to match exterior color of home).  
\_\_\_\_\_ Site plan denoting location (in most cases may not extend past sides of home).  
\_\_\_\_\_ Materials (must be cedar, cypress or No. 2 grade or better pressure-treated pine).

**Exterior Building Alterations**

**Paint (Submit only if other than original paint color)**

\_\_\_\_\_ Color and address of home with desired John Wieland Homes and Neighborhoods' color used in or approved for this or another John Wieland community in the same county.  
\_\_\_\_\_ Area of home to be repainted.  
\_\_\_\_\_ Photograph of your home plus homes on either side (in most cases adjacent homes cannot be painted the same colors).

**Storm Windows/Doors**

\_\_\_\_\_ Picture or drawing of all windows/doors on which storm windows/doors will be installed.  
\_\_\_\_\_ Picture depicting style of storm window/door to be installed.  
\_\_\_\_\_ Color (window/door trim must be baked enamel and color must be compatible with primary and trim colors).

**Building Additions**

\_\_\_\_\_ Location of addition and size of lot.  
\_\_\_\_\_ Size, color, and detailed architectural drawing of addition.  
\_\_\_\_\_ Materials (material used must match existing materials of home).  
\_\_\_\_\_ Building Permit (if required).

Note: I understand and agree that no work on this request shall commence until written approval of the Covenants Committee has been received by me. I represent and warrant that the requested changes strictly conform to the community Design Guidelines and that these changes shall be made in strict conformance with the Design Guidelines. I understand that I am responsible for complying with all city and county regulations.

Neither John Wieland Homes and Neighborhoods, Inc., the Association Board of Directors, the Association Advisory Committee or the Association Covenants Committee nor their respective members, Secretary, successors, assigns, agents, representatives or employees shall be liable for damages or otherwise to anyone requesting approval of an architectural alteration by reason of mistake in judgment, negligence or non-feasance, arising out of any action with respect to any submission. The Architectural Review is directed toward review and approval of site planning, appearance and aesthetics. None of the foregoing assumes any responsibility regarding design or construction, including, without limitation, the structural integrity, mechanical or electrical design, methods of construction, or technical suitability of materials. I hereby release and covenant not to sue all of the foregoing from/for any claims or damages regarding this request or the approval or denial thereof.

Owner's Signature \_\_\_\_\_ Date \_\_\_\_\_

**FOR COVENANTS COMMITTEE USE ONLY:**

Date Received \_\_\_\_\_ Date Reviewed: \_\_\_\_\_ Approved By: \_\_\_\_\_  
(Covenants Committee Member)

Approved \_\_\_\_\_ Not Approved \_\_\_\_\_ Conditions \_\_\_\_\_

Comments: