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Return to: Weissman, Nowack, Curry, & Wilco, P. C.  
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Attention: Julie McGhee Howard

STATE OF GEORGIA  
COUNTY OF FORSYTH

Reference: Deed Book: 300  
Page: 399

## AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR HABERSHAM POINTE CONDOMINIUM

### IMPORTANT NOTICE

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

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PREPARED BY:

Weissman Nowack  
Curry & Wilco, P.C. 

Julie McGhee Howard, Esquire

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WHEREAS, Habersham Boat House, Inc., a Georgia corporation, recorded a Declaration of Condominium for Habersham Pointe Condominium, on August 2, 1985, in Deed Book 300, Page 399, et seq., Forsyth County, Georgia Records (hereinafter referred to as the "Original Declaration"); and

WHEREAS, the Original Declaration has been previously amended by amendments recorded in the Forsyth County, Georgia Records as follows:

<u>Recording Date</u>	<u>Deed Book/Page</u>
June 26, 1986	331/646 <u>et seq.</u>
September 9, 1986	341/75 <u>et seq.</u>
June 10, 1988	412/113 <u>et seq.</u>
January 29, 1988	397/460 <u>et seq.</u>
May 13, 1993	657/245 <u>et seq.</u>
February 12, 1994	749/447 <u>et seq.</u>
July 28, 1998	1327/252 <u>et seq.</u>
March 21, 2002	2254/291 <u>et seq.</u>

WHEREAS, plats related to the Condominium, Phases I, II and III, prepared by Richard May & Associates, P.C. were filed in Condominium Plat Book 1, Pages 3-6, of the Forsyth County, Georgia Records; and

WHEREAS, floor plans relating to the Condominium were filed in Condominium File Cabinet No. 85 Folder No. 2, of the Forsyth County, Georgia Records; and

WHEREAS, Article X, Section 10.01 of the Declaration provides that the Declaration and the other condominium instruments may be amended at any time and from time to time by the assent of the Unit owners having at least two-thirds (2/3) of the total vote in the Habersham Pointe Condominium Owners Association, Inc. ("Association"); and

WHEREAS, members of the Association to which at least two-thirds (2/3) of the total votes in the Association pertain desire to amend the Declaration and have approved this amendment; and

WHEREAS, in accordance with Section 11 of the Bylaws of Habersham-Lanier Pointe Homeowners Association, Inc. ("Original By-Laws"), the Original By-Laws may be amended only at a duly constituted annual or special meeting of the Association, the notice of which states that consideration of such proposed amendment is a purpose of the meeting. The Original Bylaws may be amended by the affirmative vote of the members entitled to cast fifty-one percent (51%) or more of the total vote of the Association; and

WHEREAS, at least a majority of all the Association's Board of Directors have approved this amendment to the Original By-Laws; and

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

NOW, THEREFORE, the Original Declaration, the Original By-Laws and all exhibits thereto, are hereby stricken in their entirety and this Declaration is simultaneously substituted therefore:

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# DECLARATION OF CONDOMINIUM FOR HABERSHAM POINTE

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PREPARED BY:

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Weissman Nowack  
Curry & Wilco, P.C.   
CHANGING THE LANDSCAPE

Julie McGhee Howard, Esquire

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## 1. NAME

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

## 2. DEFINITIONS

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Unless the context otherwise requires, capitalized terms used in this Declaration, the Bylaws, and the Articles of Incorporation shall be defined as set forth in this Paragraph 2. Otherwise, the 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.

**A. Act** means the Georgia Condominium Act, O.C.G.A. §44-3-70, *et seq.*, as may be amended.

**B. Architectural Control Committee or ACC** means the committee established to exercise the architectural review powers set forth herein, which shall be the Board of Directors of the Association unless the Board appoints a separate Architectural Control Committee.

**C. Area of Common Responsibility** means the Common Elements, together with those areas, if any, which by the terms of this Declaration or by contract or agreement with any other Person become the maintenance responsibility of the Association. The office of any property manager employed by or contracting with the Association if located in the Condominium, or any public rights-of-way within or adjacent to the Community may be considered by the Board of Directors to be part of the Area of Common Responsibility.

**D. Articles of Incorporation or Articles** means the Articles of Incorporation of Habersham Pointe Condominium Owners Association, Inc., filed with the Secretary of State of the State of Georgia.

**E. Association** means Habersham Pointe Condominium Owners Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

**F. Board or Board of Directors** means the body responsible for management and operation of the Association.

**G. Bylaws** mean the Bylaws of Habersham Pointe Condominium Owners Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference.

**H. Common Elements** means those portions of the property subject to this Declaration, which are not included within the boundaries of a Unit, as more particularly described in this Declaration.

**I. Common Expenses** means the expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including, but not limited to, those expenses incurred for maintaining, repairing, replacing, and operating the Common Elements.

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

**K. Condominium** means that real estate which is submitted to the Act and the provisions of this Declaration, as described in Exhibit "A" attached hereto and incorporated herein by reference.

L. **Condominium Instruments** means this Declaration and all exhibits hereto, the Bylaws, the Articles of Incorporation, the Survey, Floor Plans and all rules and regulations and architectural guidelines for the Association, all as may be supplemented or amended.

M. **Declaration** means this Declaration of Condominium for Habersham Pointe.

N. **Director** means a member of the Association's Board of Directors.

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

P. **Effective Date** means the date that this Declaration is recorded in the Forsyth County, Georgia land records.

Q. **Eligible Mortgage Holder** means a holder of a first Mortgage secured by a Unit who has submitted a request in writing to the Association to be deemed an Eligible Mortgage Holder. Such notice must include the mortgage holder's name and address and the Unit number or address of the property in the Condominium secured by such mortgage.

R. **Floor Plans** means the floor plans for Habersham Pointe, filed in the Condominium File Cabinet No. 85 Folder No. 2 of the Forsyth County, Georgia land records. All of the Floor Plans are incorporated herein by this reference.

S. **Limited Common Elements** means a portion of the Common Elements reserved for the exclusive use of those entitled to occupy one or more, but less than all, Units, as more particularly set forth in this Declaration.

T. **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.

U. **Mortgagee** or **Mortgage Holder** means the holder of any Mortgage.

V. **Occupant** means any person staying overnight in a Unit for a total of more than 30 days, either consecutive or nonconsecutive, in any calendar year.

W. **Officer** means an individual who is elected by the Board of Directors to serve as President, Vice President, Secretary, or Treasurer, or to hold such other office as may be established by the Board of Directors.

X. **Owner** means the record title holder of a Unit, but shall not include a Mortgage Holder. For purposes hereof, the holder of a tax deed on a Unit shall be deemed the Owner thereof, notwithstanding the fact that there may exist a right of redemption on such Unit.

Y. **Person** means any individual, corporation, limited liability company, firm, association, partnership, trust, or other legal entity.

Z. **Survey** means those plats of the survey relating to the Condominium filed in Plat Book 1, Pages 3-6 of the Forsyth County, Georgia land records. All of the plats of survey are incorporated herein by this reference.

**AA. Unit** means that portion of the Condominium intended for individual ownership and use as more particularly described in this Declaration and shall include the undivided ownership in the Common Elements assigned to the Unit by this Declaration.

**BB. Violator** means any Owner who violates the Condominium Instruments and any Owner's family member, guest or Occupant who violates such provisions; provided, however, if an Owner's family member, guest or Occupant violates the Condominium Instruments, the Owner of the relevant Unit also shall be considered a Violator.

### **3. LOCATION, PROPERTY DESCRIPTION, PLATS AND PLANS**

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The Condominium subject to this Declaration and the Act is located in Land Lot 144, of the 2nd District of Forsyth County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, and incorporated herein by this reference. The Survey and Floor Plans are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

### **4. UNITS AND BOUNDARIES**

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The Condominium will be divided into 60 separate Units and Common Elements, some of which will be assigned as Limited Common Elements. Each Unit consists of a dwelling 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 the Survey and the Floor Plans, and a list of the Units is attached hereto as Exhibit "B" and incorporated herein by this reference. Each Unit includes that part of the structure, which lies within the following boundaries:

#### **A. VERTICAL BOUNDARIES.**

The vertical boundaries of the Units shall be the finished center line of all party walls, the exterior of the finished surface of the doors and windows and the unfinished surface deemed to be included within said Unit boundaries and all attachments to the exterior walls of the Unit, including but not limited to, entry steps, windows, screens, hardware, window boxes, and any other apparatus designed to serve a single Unit.

#### **B. HORIZONTAL BOUNDARIES.**

The horizontal boundaries of the Units shall be, insofar as the upper boundary is concerned, the under side of the unfinished ceiling of the unit extended to meet the parametrical boundaries. The lower boundary shall be the upper side of the unfinished, undecorated surface of the floor of the Unit and the deck extended to meet the parametrical boundaries.

#### **C. ADDITIONAL INFORMATION TO INTERPRET UNIT BOUNDARIES.**

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 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 heating and air conditioning systems and appliances and plumbing fixtures within a Unit shall be part of the Unit.

If any chutes, flues, ducts, conduits, wires, pipes or other apparatus lies partially within and partially outside of the designated boundaries of the Unit, any portion thereof that serves only that Unit shall be deemed to be a part of that Unit, while any portions thereof which serve more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements, except that any chimney, fireplace flue, damper and chimney cap shall not be deemed part of a Unit, but shall be considered a Limited Common Element assigned to such Unit as set forth below.

In interpreting deeds and Floor Plans, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original Floor Plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or Floor Plan, regardless of settling or lateral movement of the building in which the Unit was located, and regardless of minor variances between the boundaries shown on the Floor 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**

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The Common Elements consist of all portions of the Condominium not located within the boundaries of a Unit. 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 and incorporated herein by this reference. Such percentages of undivided interest may be altered only by the consent of all Owners and Mortgagees (or such lesser number of Owners and Mortgagees as may hereafter be prescribed by the Act) expressed in a duly recorded amendment to this Declaration.

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.

In addition to all of its other powers and duties necessary for the administration of the Condominium, the Board of Directors has the right to close permanently or temporarily any portion of the Common Elements (excluding the Limited Common Elements and any Common Elements the use of which is reasonably necessary for access to or from a Unit) with 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 days after the closing explaining the reason for the closing. Notwithstanding the above, the Owners may re-open closed Common Elements by a majority vote of the total Association vote, cast at a duly called special or annual meeting.

## **6. LIMITED COMMON ELEMENTS**

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### **A. Limited Common Elements Identified.**

The Limited Common Elements located on the Condominium and the Unit(s) to which they are assigned are:

(1) the portion of the Common Elements on which there is located any portion of the air conditioning or heating system exclusively serving a particular Unit or Units is assigned as a Limited Common Element to the Unit or Units so served;

(2) any utility meter which serves only one Unit is assigned as a Limited Common Element to the Unit so served;

(3) a Unit may be assigned one parking space, numbered and corresponding to the assigned Unit; and

(4) any balcony or patio attached to and serving only one Unit is assigned as a Limited Common Element to the Unit to which it is attached and which it serves.

**B. Board's Power to Assign and Reassign.**

The Board of Directors, without need for a membership vote, is hereby authorized to assign and to reassign Limited Common Elements and Common Elements not previously assigned, provided that any such assignment or reassignment shall be made in accordance with the provisions of Section 44-3-82(b) and (c) of the Act. A Common Element not previously assigned as a Limited Common Element may be so assigned and a Limited Common Element may be reassigned by the Board, without the need for a vote of the Association, upon written application to the Association by the Owner or Owners for whose exclusive use such Common Element is requested or whose use of the Limited Common Element previously assigned is directly affected. Upon such application, the Association shall prepare and execute an amendment to this Declaration assigning the Common Element as a Limited Common Element or reassigning the Limited Common Element, which amendment shall be executed by the Owner or Owners making such application. Such amendment shall be delivered and become effective as provided in Section 44-3-82 of the Act.

**7. ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

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**A. Membership.**

The Association shall have one class of membership. Each Unit Owner shall be a member of the Association. This does not include persons who hold an interest merely as security for the performance of an obligation. The giving of a security interest shall not terminate an Owner's membership. No Owner, whether one or more Persons, shall have more than one membership per Unit owned in the Condominium. An Owner's spouse or Domestic Partner may exercise all membership rights and privileges of the Owner.

**B. Voting.**

The Owner(s) of the Unit shall be entitled to one vote for such Unit, which vote may be exercised and suspended as provided in this Declaration and the Bylaws. The Owner or collective Owners shall be entitled to one equally weighted vote for such Unit.

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

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**A. General Allocations.**

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

**B. Specific Special Assessments.**

Notwithstanding the above, the Board of Directors shall have the power to levy specific special assessments pursuant to this Paragraph and Section 44-3-80(b) of the Act as, in its discretion, it shall deem appropriate. Failure of the Board to do so shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to do so in the future.

(1) Any Common Expenses benefiting less than all of the Units or significantly disproportionately benefiting all Units may be specifically specially assessed equitably (according to the benefit received) among all of the benefited Units. Except for expenses for maintenance, repair or replacement of Limited Common Elements, which may be specifically specially assessed, expenses incurred for the maintenance, repair or replacement of the Area of Common Responsibility, shall not be specifically specially assessed to a Unit or Units.



(2) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units or by the Occupant(s), licensees or invitees of any such Unit or Units may be specifically specially assessed against such Unit or Units.

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

## **9. ASSESSMENTS**

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### **A. Purpose of Assessment.**

The Association shall have the power to levy assessments as provided herein and in the Act. Assessments shall be used for any purpose the Board of Directors determines will benefit the Owners or the Community.

### **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 all assessments and other charges levied pursuant to this Declaration and the Bylaws.

All assessments and charges levied against a Unit and its Owner, together with interest, costs and reasonable attorneys' fees actually incurred (including post-judgment attorneys' fees, costs and expenses), and rents (if the Board of Directors so elects), in the maximum amounts permitted under the Act, shall be: (1) a charge and a continuing lien against such Unit; and (2) the personal obligation of the Person who is the Owner of the Unit on the due date of the assessment. Each Owner and his or her grantee shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance of the Unit. The Association, in the Board's discretion, may record a notice of such lien in the Forsyth County, Georgia land records evidencing the lien created under the Act and this Declaration. The lien provided for herein shall have priority as provided in the Act.

Assessments shall be paid in such manner and on such dates as determined by the Board of Directors. No Owner may exempt himself or herself from liability, or otherwise withhold payment of assessments, for any reason whatsoever.

### **C. Delinquent Assessments**

All assessments and charges not paid on or before the due date shall be delinquent, and the Owner shall be in default. In addition to the powers set forth below for collection of unpaid assessments and charges, the Association shall be entitled to exercise all other rights and remedies provided by law and in equity to satisfy an Owner's debt.

If any assessment or charge, or any part or installment thereof, is not paid in full within 10 days of the due date, or such later date as may be provided by the Board of Directors:

(1) a late charge equal to the greater of \$10.00 or 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;

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

(3) the Board may accelerate and declare immediately due any unpaid installments of that Owner's assessments and charges. Upon acceleration, the Owner shall lose the privilege of paying such assessments and charges in installments, unless the Board otherwise reinstates such privilege in writing. If the Association has pending legal action against an Owner for unpaid assessments or charges, then no notice shall be required to accelerate unpaid installments of any annual or special assessments that come due during any fiscal year after such legal action commences, until all amounts owed are paid in full or the Board otherwise reinstates such privilege in writing; and

(4) the Association may bring legal action to collect all sums owed under the Declaration and Georgia law.

If assessments or other charges, or any part thereof, remain unpaid more than 30 days after the due date, the Owner's right to vote and use the Common Elements are suspended automatically until all amounts owed are paid in full or the Board of Directors otherwise reinstates such rights in writing; provided, however, the Board may not deny ingress or egress to or from a Unit. The Board also may suspend the Owner's and/or Occupant's right to use the Limited Common Element parking spaces assigned to his or her Unit, including the right to bring or park vehicles on the Common and Limited Common Elements or have guests bring or park vehicles on the Common and Limited Common Elements. However, the Board may not limit pedestrian, medical, fire, police or other clearly marked health, safety, service or emergency vehicle ingress or egress to or from the Unit to provide that identified service to 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 days prior to the date of such suspension.

In the event that the Association provides for any utility paid for as a Common Expense, the Board also may suspend such utility but only after: (a) the Association obtains a final judgment or judgments from a court of competent jurisdiction, in excess of a total of \$750.00, or such other amount as required by the Act; (b) the Association provides the notice required to be provided by the institutional provider of such utility prior to suspension of such utility; and (c) the Association complies with any other requirements of Georgia law. A Unit Owner whose utility or service has been suspended shall not be entitled to use any such utility or service paid for as a Common Expense from any source and any such unauthorized use shall be considered a theft of services under O.C.G.A. § 16-8-5. The utility or service shall not be required to be restored until all judgments are paid in full, at which time the Association shall direct the utility or service provider to restore the utility or service. Enforcement under this subparagraph is not dependent upon or related to other restrictions and/or other actions.

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

#### **D. Computation of Operating Budget and Assessment**

To establish the annual assessment for a fiscal year, the Board of Directors shall prepare a budget covering the estimated costs of operating the Community, which may include a reserve contribution as provided below. The Board shall provide the budget to the Owners at least 21 days before the due date of

such assessment, or the first installment thereof. The budget and the assessment shall become effective unless, before the due date of such assessment, a majority of the total Association membership votes to disapprove them at a duly called membership meeting.

If the membership disapproves the proposed budget or the Board of Directors fails for any reason to determine a new budget, the budget then in effect shall continue until a new budget is adopted as provided herein. The Board may adopt an adjusted budget at any time during the year following the procedure specified above.

The budget shall not operate as a limitation on expenditures by the Board of Directors. The budget is merely an estimate of Common Expenses on which the Board establishes the annual assessment.

#### **E. Special Assessments**

In addition to the all other assessments and charges provided for herein, the Board of Directors may levy a special assessment against all Owners for any purpose. Special assessments totaling more than an average of \$200.00 per Unit in any fiscal year must first be approved by at least a majority of those Owners either voting by written consent or ballot pursuant to the Bylaws, or at least a majority of those Owners present or represented by proxy at a duly called meeting of the members, notice of which shall specify the purpose of such meeting.

#### **F. Capital Budget and Contribution**

The Board of Directors may prepare an annual or multi-year capital reserve budget and may establish a capital reserve fund contribution based on such budget. Capital reserve budgets should take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost.

#### **G. Capital Contribution Assessment Upon Transfer of Units**

In addition to all other assessments and charges provided for herein, upon any conveyance or transfer of a Unit, other than to the spouse or heir of the Owner, the purchaser or grantee thereof shall be assessed and be subject to a non-refundable, non-prorated capital contribution assessment ("Capital Contribution Assessment").

The Capital Contribution Assessment shall be an amount equal to four months of the assessments applicable to such Unit at the time of such conveyance or transfer.

The Capital Contribution Assessment shall not constitute an advance payment of the annual assessment. The Capital Contribution Assessment shall constitute a specific special assessment against such Unit, a continuing lien against such Unit, and a personal obligation of the Owner of such Unit.

#### **H. Foreclosure Administration Fee**

It is recognized that foreclosures of mortgages on Units create substantial administrative and other burdens on the Association. These additional burdens on the Association include, but are not limited to, having to monitor the status of mortgages and legal periodicals to determine when foreclosures occur, searching the Forsyth County, Georgia land records to determine the names of the purchasers at foreclosure sales, contacting the foreclosure purchasers/owners regarding foreclosure-purchaser responsibilities and assessment obligations and updating Association records multiple times to deal with just a single Unit. Pursuant to this Declaration and Section 44-3-225(a) of the Act, the Association is authorized to assess individual Owners certain fees and expenses occasioned by and benefiting just those Owners or those Owners' Units. In accordance with these provisions, and in addition to annual assessments, special assessments, and other charges provided for in this Declaration, any Person who acquires a Unit at a foreclosure sale of the mortgage on such Unit, or by deed in lieu of a foreclosure, will be required to pay the

Association a Foreclosure Administration Fee of \$1,000.00 at the time the foreclosure deed or deed in lieu of foreclosure is recorded in the Forsyth County, Georgia records. The Foreclosure Administration Fee shall constitute a specific assessment as described in this Declaration.

**I. Statement of Account**

Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments and charges due and unpaid, including but not limited to any late charges, interest, fines, attorneys' fees or other charges against such Unit. The Association shall respond in writing within five business days of receipt of the request for a statement; provided, however, the Association may require the payment of a reasonable fee, 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, if such statement is reasonably relied upon in connection with the issuance of any Mortgage on such Unit.

**J. Surplus Funds and Common Profits**

Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, be: (1) distributed to the Owners; (2) credited to the next assessment chargeable to the Owners; or (3) added to the Association's capital reserve account.

**10. MAINTENANCE RESPONSIBILITY**

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**A. Owner's Responsibility.**

Maintenance of a Unit shall be the responsibility and expense of the Owner thereof and shall, subject to the provisions of Paragraph 6 and Paragraph 10(b) hereof, include, but not be limited to:

- (1) maintenance of all portions of the Unit;
- (2) maintenance of those Limited Common Elements balconies and patios appurtenant to the Unit;
- (3) maintenance of all fixtures, appliances and equipment installed in a Unit or Limited Common Element, commencing at a point where the utility lines, wires, pipes, conduits or systems enter the exterior walls of a Unit;
- (4) all glass surfaces of the Unit; and
- (5) all lighting fixtures, entry steps, windows, screens, mailboxes and other hardware associated with the Unit

All such work shall be done without disturbing the rights of other Owners. In addition, each Unit Owner shall be responsible for the maintenance and replacement of such items shall be of the same type originally installed in the Unit unless approved by the Board of Directors of the Association or its designated architectural committee.

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.

**B. Association's Responsibility.**

Maintenance of the Common Elements shall be the responsibility and expense of the Association and shall, subject to the provisions Paragraph 5 hereof, include, but not be limited to the exteriors of all Units, including: paint, repair, replace and care for roof surfaces (shingles), gutters, downspouts, and exterior surfaces of Unit walls including veneer or siding attached thereto. (The term, "maintenance" as used in this Declaration shall refer to and include all upkeep, repairs and replacements.)

Additionally, the Association shall have the right, but not the obligation, to conduct a periodic inspection, on a schedule to be determined by the Board of Directors, of all chimneys, fireplace flues, dampers and chimney caps. If, in the Board of Director's sole discretion, any or all of such Limited Common Elements needs to be cleaned and/or repaired, the Association shall provide such cleaning and/or repair and the cost of such periodic inspection, cleaning and/or repair may be assessed against the Owner(s) of the Unit(s) served by such Limited Common Elements.

The Association shall have the right, but not the obligation, to maintain public rights of way adjacent to the Condominium and other property not owned by the Association. If the Board of Directors in its sole discretion determines that such maintenance would benefit the Condominium. At any point thereafter, the Board can cease to maintain such property and such maintenance obligation will revert back to the party originally responsible therefore.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard.

If, during the course of performing its maintenance responsibilities hereunder, the Board discovers that maintenance, repair or replacement is required of an item which is the Owner's responsibility, and such maintenance, repair or replacement must be performed for the Association to properly complete its maintenance project, then the Association may perform such work on behalf of the Owner and at the Owner's sole expense, without prior notice to the Owner, such being deemed an emergency situation hereunder.

If the Board of Directors determines that the need for maintenance or repair on the Common Elements is caused through the willful or negligent act of any Owner or Occupant or his or her family, guests, tenants, or invitees, then the Association may charge the cost of any such maintenance, repair, or replacement as a specific special assessment against the Owner's or Occupant's Unit and the Owner thereof.

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

**C. Measures Related to Insurance Coverage.**

The Board of Directors, upon resolution, shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Condominium which are the maintenance responsibility of the Unit Owner, which will, in the Board's sole discretion, decrease the possibility of fire or

other damage in the Condominium, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring Owners to install and maintain smoke detectors, requiring Owners to certify that they have checked the batteries for their smoke detectors, requiring Owners to allow the Association to inspect the smoke detectors and replace batteries if needed on a schedule to be determined by the Board of Directors, 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 \$500.00 per Unit in any 12 month period.

In addition to, and not in limitation of, any other rights the Association may have, if any Unit Owner does not comply with any requirement made by the Board of Directors, the Association, upon 15 days' written notice (during which period the Unit Owner may perform the required act or work without further liability), may perform such required act or work at the Unit Owner's sole cost. Such cost shall be added to and become a part of the assessment to which the Owner is subject, shall become and be the personal obligation of the Owner and a lien against the Unit, and shall be collected as provided herein for the collection of assessments. The Association shall have all rights necessary to implement the requirements mandated by the Board, 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.

#### **D. Inspection, Maintenance, Repair and Replacement of High-Risk Components.**

The Board may, from time to time, after notice to all Owners and an opportunity for members comment, determine that certain portions of the Units required to be maintained by the Owners, or certain objects or appliances within the Unit, pose a particular risk of damage to other Units and/or the Common Elements if they are not properly inspected, maintained, repaired or replaced. By way of example, but not limitation, these portions, objects or appliances might include smoke detectors and HVAC units. Those items determined by the Board to pose such a particular risk are referred to herein as "High-Risk Components."

At the same time that it designates a High-Risk Component, or at a later time, the Board may require one or more of the following with regard to the High-Risk Component:

(1) that it be inspected at specified intervals by a representative of the Association or by an inspector(s) designated by the Board;

(2) that it be replaced or repaired at specified intervals, or with reference to manufacturers' warranties, whether or not the individual component is deteriorated or defective;

(3) that it be replaced or repaired with items or components meeting particular standards or specifications established by the Board;

(4) that when it is repaired or replaced, the installation include additional components or installments specified by the Board;

(5) that it be replaced or repaired by contractors having particular licenses, training or professional certification or by contractors approved by the Board; and

(6) if the replacement or repair is completed by an Owner, that it be inspected by a person designated by the Board.

The imposition of requirements by the Board in this provision shall not relieve an Owner of his or her obligations regarding High-Risk Components, including, but not limited to, the obligation to perform and pay for all maintenance, repairs and replacement thereof. If any Owner fails or refuses to maintain, repair or replace a High-Risk Component in accordance with the requirements established by the Board hereunder,

the Association may, in addition to all other rights and powers granted to it pursuant to the Association Legal Instruments enter the Unit for the purpose of inspecting, repairing, maintaining, or replacing the High-Risk Component, as the case may be, and charge all costs of doing so back to the Owner as a specific assessments.

**E. Failure to Maintain.**

If the Board of Directors determines that any Owner has failed or refused to discharge properly his or her maintenance, repair or replacement obligations pursuant to this Paragraph, then the Association shall give the Owner written notice of: (1) the Owner's failure or refusal; (2) the Association's right to provide necessary maintenance, repair, or replacement at the Owner's sole cost and expense; and (3) the maintenance, repair, or replacement deemed necessary by the Board.

Unless the Board determines that an emergency exists or a violation is re-occurring for which notice previously has been issued hereunder, the Owner shall have 30 days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within 30 days. If the Board determines that an emergency exists, a violation is re-occurring for which notice has been previously issued hereunder or an Owner has not complied with the demand given by the Association hereunder, the Association may provide any such maintenance, repair or replacement, the costs of which shall be a specific special assessment against the Owner and the Unit.

**F. Maintenance Standards and Interpretation.**

The Board of Directors may establish, interpret and enforce maintenance standards for the Condominium. These standards may vary over time, however, the variances shall not constitute a waiver by the Board of the right to establish and enforce maintenance standards under this Paragraph. No Board decision or interpretation regarding maintenance standards shall constitute a binding precedent with respect to subsequent Board decisions or interpretations.

**11. ARCHITECTURAL CONTROLS**

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**A. Architectural Control Committee.**

The Architectural Control Committee ("ACC") shall constitute a standing committee of the Association. The ACC shall consist of the Board of Directors unless the Board of Directors delegates to other Persons the authority to serve on the ACC.

**B. Limitation on Exterior Modifications.**

Except as otherwise provided herein, no Owner, Occupant, or any other person may, without written approval of the Board or ACC:

- (1) make any change or alteration that affects the exterior appearance of the Unit; or
- (2) erect, place or post any object or thing on the Unit that affects the exterior appearance of the Unit.

Additionally, no modification shall encroach onto the Common Elements unless expressly approved in writing by the Board.

**C. National Flags.**

Notwithstanding anything to the contrary herein, an Owner may display one flag not exceeding 12 square feet in size on a flag holder located on each balcony or patio assigned exclusively as a Limited Common Element to a Unit. No flag holder shall be affixed to the exterior façade of a building. No flag

shall be displayed in a manner inconsistent with any provision of the Freedom to Display the American Flag Act of 2005, or any applicable law. By taking title to a Unit, all Owners agree and acknowledge that the Board, on behalf of the Association, has a substantial interest in protecting the aesthetic appearance of the Condominium and therefore may adopt additional reasonable restrictions pertaining to the time, place, or manner of displaying the flag of the United States.

**D. Signs.**

Except as may be provided for herein or as may be required by legal proceedings, no signs, advertising posters, flyers, 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, except that one professional security sign not to exceed six inches by six inches in size may be displayed from within a Unit, and one professionally lettered "For Rent" or "For Sale" sign not to exceed two feet by two feet in size may be displayed from within a Unit being offered for sale or for lease. The Board also shall have the authority to adopt regulations permitting temporary signs on the front door of a 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.

**E. 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:

**(1) Alterations to the Interiors of the Units.** Except as provided herein, no Owner or Occupant may make any alteration within a Unit which involves connecting to Common Element pipes, lines, conduits and/or other apparatus for access to common utilities without prior written ACC approval (including, but not limited to, installation of washers and dryers and modifying connection of washers and dryers). Except as provided herein, no Owner or Occupant shall make any interior modifications to or place an excessive load on any structural or load bearing portions of a Unit without first obtaining the prior written approval of the ACC. Such approval shall not be granted by the ACC unless the Owner has presented to the ACC 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 and the Condominium. All building code requirements must be complied with and necessary permits and approvals secured for any modifications. Notwithstanding the above, all Owners desiring to make any interior modifications or alterations to a Unit affecting the Common Elements or structure or load bearing portions of a Unit must make application to the ACC as described below in order for the ACC to make the determination of whether the ACC's approval is required.

Notwithstanding the above, if any Owner 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 no portion of any structural or load bearing portions of the Unit(s) are materially weakened or removed and the ACC has approved the plans described above and 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 in this Paragraph shall not be deemed an alteration or relocation of boundaries between adjoining Units as defined in O.C.G.A. § 44-3-91.

**(2) Relocation of Boundaries.** Boundaries between adjoining Units shall not be relocated. Boundaries between adjoining Units may be relocated only in accordance with the provisions of O.C.G.A. § 44-3-91 and this Declaration.

**(3) Subdivision of Units.** No Unit shall be subdivided into a smaller Unit or Units. An Owner may subdivide his Unit only in accordance with the provisions of O.C.G.A. § 44-3-92 and this Declaration. Association.



**F. Replacing Carpet with Tile or Hardwood Floors.**

No Owner, Occupant, or any other Person may replace carpeting with a tile, marble, vinyl, hardwood floor, or other hard surfaced flooring material, on the interior floor of a Unit that is located immediately above another Unit without first obtaining written approval of the ACC. Among other factors, the ACC may consider whether the change will cause noise to any Unit below that will exceed the average noise level in Units below Units with carpeted floors and that the weight of such proposed flooring is appropriate and will not cause problems to the structure or subflooring.

The Owner applying for such approval shall provide the ACC, with information regarding these factors, as well as other information requested by the ACC regarding the proposed flooring and its effect; provided, however, the noise level requirements shall be considered to be met if the Owner provides a sound transmission test that the proposed flooring will create a noise level less than a standard level set by reasonable regulation of the ACC. Notwithstanding anything to the contrary stated herein, at least 80% of each room within a Unit located above another Unit (excluding the kitchen and bathrooms) shall have area rugs or carpet unless the flooring is sound proofed so as not to exceed the noise level in Units with carpeted floors.

**G. Standards and Interpretation**

The Board of Directors may establish, amend and publish written Community-Wide Standards for modifications that affect the exterior appearance of Units. These standards may vary for different parts of the Community, based on street visibility and location of the proposed modification or Unit. Any standards established by the Board hereunder may be amended or vetoed by a majority of the total Association vote. No Board decision or interpretation regarding such standards shall constitute a binding precedent with respect to subsequent Board decisions or interpretations.

**H. Application Process and Review**

The Board of Directors may establish procedures, forms, conditions and requirements for the submission of applications for modifications to the exterior appearance of a Unit. Such applications shall be in writing and, unless otherwise provided by the Board, submitted to the ACC. If the application requests any variance from provisions of this Declaration or published Community-Wide Standards related to the exterior appearance of the Unit, the Owner must expressly identify such variance in the application. No approval issued hereunder shall authorize such a variance unless that variance is expressly identified in the application and specifically approved in writing by the Board or ACC.

Except as may otherwise be determined by the Board, the ACC or its designated representative shall be the sole arbiter of such application.

The standard for approval of such modifications shall include, but not be limited to: (1) aesthetic consideration; (2) materials to be used; (3) compliance with the Community-Wide Standards, this Declaration, or the design standards which may be established by the Board; (4) harmony with the external design of the existing dwellings, Units and structures, and the location in relation to surrounding structures and topography; and (5) any other matter deemed to be relevant or appropriate by the Board or ACC. The Board or ACC shall approve any request that it determines, in its reasonable discretion, to be in substantial compliance with such standard for approval.

**I. Ruling on Application**

If the Board or ACC fails to approve or to disapprove such application within 45 days after the application and all required information have been submitted, the Owner submitting the application may issue written notice, via certified mail, to the Association President, informing the President of the Owner's intent to proceed with the modification as identified in the application. Unless the Association issues a written disapproval of the application within 10 days of receipt of the Owner's notice, the approval will not be required and this subparagraph will be deemed complied with as to the items specifically identified in the

application. However, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any modification that is otherwise in violation of the Association Legal Documents, or of any applicable zoning or other laws. Except as provided in this subparagraph, no approval of a modification shall be valid unless issued in writing. Owners may not rely on any verbal approval or statements from any person as the approval required for a modification.

**J. Appeal**

If the ACC does not consist of the Board of Directors, and the ACC disapproves any application or part thereof, an Owner may, in writing, appeal the ACC's decision to the Board. The notice of appeal must be sent to the Board by certified mail and received by the Board within 14 days from the date of the ACC's disapproval notice, or the decision of the ACC shall become final and all rights of appeal shall terminate. Within 45 days of receipt of a timely appeal, the Board shall approve, disapprove, or conditionally approve the Owner's application, and such ruling shall be final and binding on the Owner.

**K. Encroachments onto Common Elements**

The ACC, subject to this Paragraph, may permit Unit Owners to make encroachments onto the Common Elements as it deems acceptable. Such permission or approval, if granted, shall be provided in writing to the Owner. If any Owner or Occupant makes any other exterior change, alteration, or construction (including landscaping) upon the Common Elements or Limited Common Elements without permission or approval as described in this Paragraph, he or she does so at his or her sole risk and expense. The Board may require that such unapproved change, alteration or construction be removed or that it remain on the Common Elements or Limited Common Elements without reimbursement to the Owner or Occupant for any expense he or she may have incurred in making the change, alteration or construction.

**L. Commencement and Completion of Construction**

All modifications approved hereunder must be commenced within six months from the date of approval, or such approval shall be deemed revoked, unless the Board or ACC gives a written extension for commencing the work. All work approved hereunder shall be completed in its entirety within six months from the date of commencement, unless otherwise agreed in writing by the Board or ACC.

**M. Professional Consultants and Fees**

The Board of Directors shall be authorized to charge, as a specific special assessment, against any Owner and Unit: (1) a reasonable administrative fee for review of modifications on, or submitted plans for, such Unit; and (2) reasonable fees for any architect, engineer or other professional consultant engaged by the Board to assist with review of modifications on, or submitted plans for, such Unit. Any professional consultants fees shall constitute specific assessments as described in this Declaration.

**N. Limitation of Liability**

The Association, Board of Directors, ACC, and members thereof, are not responsible for ensuring, and shall not be held liable for any injury, damage or loss arising out of: (1) the quality, structural integrity or soundness of any modification on a Unit; or (2) any modification's compliance with building codes, zoning regulations or other governmental requirements.

**12. USE RESTRICTIONS**

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Each Owner shall be responsible for ensuring that the Owner's family, guests, tenants and Occupants comply with all provisions of the Condominium Instruments. In addition to the following use restrictions, the Board of Directors may establish rules and regulations in accordance with the terms hereof and as specified in the Bylaws.

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

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

(2) the business activity does not involve visitation or deliveries to the Unit by employees, clients, customers, suppliers, couriers, mail carriers, or other business invitees in greater volume than would normally be expected for a Unit without business activity;

(3) the business activity does not involve use of the Common Elements, except for necessary access to and from the Unit by permitted business invitees;

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

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

(6) 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 Owners or Occupants, as determined in Board of Director's discretion.

The Association has no liability for any business activity in the Condominium. The Association also has no liability for any action or omission by it, its Directors, Officers, agents, representatives and/or vendors, that may adversely impact an Owner's or Occupant's business activity. Each Owner and Occupant hereby releases and holds harmless the Association, its Directors, Officers, agents, representatives and/or vendors, for any interruption or suspension of, or any damages to, any business activities conducted in or from a Unit. Owners and Occupants shall obtain whatever supplemental insurance may be necessary to protect their business assets, business continuity and business interests on their Units. The Association is not obligated to obtain any insurance coverage for any Owner's or Occupant's business activity.

The term "business," as used in this provision, shall include, without limitation, any occupation, work or activity that involves the provision of goods or services to persons other than the provider's family for a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore

**B. Occupancy.**

(1) **Number of Occupants.** No more than two Occupants per bedroom are permitted in the Unit, as such bedrooms are depicted on the plans for such Unit approved by the applicable governmental agency. This occupancy restriction shall not apply to require the removal of any person lawfully occupying a Unit on the Effective Date hereof. Upon written application, the Board of Directors shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988.

If an Owner is a corporation, limited liability company, partnership, trust or other legal entity not being a natural person, the Owner shall designate in writing to the Board the name(s) of the person(s) who will occupy the Unit. The designated person(s) to occupy the Unit may not be changed more frequently than once every 12 months without the Board's written consent.

(2) **Sex Offender.** No person who is adjudicated to be a sexual predator or a habitual sex offender and required to register with a designated registering agency, thereby requiring notice to be

given pursuant to the Georgia Sex Offenders Act or similar statute from another jurisdiction, as the same may from time to time be amended, may reside in or occupy a Unit and/or enter onto or remain in or on the Condominium for any length of time. Any violation of this restriction shall subject the Unit Owner and/or any Occupant of the Unit to any and all remedies provided for by law as well as this Declaration. The Association shall not, however, be liable to any Unit Owner or Occupant, or anyone visiting any Unit Owner or the Association, as a result of the Association's alleged failure, whether negligent, intentional or otherwise, to enforce the provisions of this restriction.

**C. Use of Common Elements.**

There shall be no obstruction of the Common Elements, nor shall anything be kept, parked, stored on or removed from any part of the Common Elements without the express written consent of the Board of Directors. The Association may remove and either discard or store any unauthorized personal property left or kept on the Common Elements and the Association shall have no obligation to return, replace or reimburse the owner for such property. The Association is not liable to any Person for any loss of, theft of, or damage to any personal property.

The Board may allow an Owner or Occupant to temporarily reserve portions of the Common Elements. Such Owner or Occupant, on behalf of himself or herself and his or her guests and family, assumes all risks associated with such use of the Common Elements and all liability for any damage or injury to any person or property as a result of such use. The Association shall not be liable for any damage or injury resulting from such use.

There shall be no use of the roofs of the Condominium buildings by the Owners, Occupants, their family members, guests, tenants, invitees, agents or contractors. The Association and its agents and contractors shall have access to the roofs for performing its maintenance and repair responsibility.

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

**D. Use of Limited Common Elements, Balconies and Patios.**

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

Objects over 42 inches in height, bicycles, laundry garments, towels and objects other than potted plants and patio furniture, except as may be authorized by the Board, shall not be placed on a balcony or patio. Objects shall not be permitted to hang over or be attached to any exterior balcony or patio or otherwise protrude outside of the vertical plane formed by the exterior surface of the balcony or patio wall. Penetration of the surfaces of a balcony or patio wall or floor is prohibited.

**E. Grilling.**

The use of outdoor grills other than electric grills on any portion of the Common Elements or Condominium buildings, including without limitation, the decks, balconies or patios, is prohibited, except in Board designated areas on the Common Elements; provided, however, Owners and Occupants are permitted to use electric grills.

**F. Prohibition of Damage, Nuisance and Noise.**

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

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

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

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

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

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

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

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

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

(vii) Any smoking in a Unit or on the Condominium that results in second-hand smoke transferring or spreading into other Units;

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

(ix) Any construction or similar activities in a Unit that can be heard in other Units between the hours of 9:00 p.m. and 7:30 a.m.; or

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

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

No Unit Owner or Occupant may use or allow the use of the Unit or the Common Elements in any manner which creates noises between the hours of 11:00 p.m. and 7:30 a.m. which can be heard by persons in another Unit that will, in the Board's sole discretion, unreasonably interfere with the rights, comfort or convenience of any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Unit.

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

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

#### **G. Firearms.**

The display or discharge of firearms on the Common Elements is prohibited, except: (1) by law enforcement officers; and (2) to transport lawful firearms across the Common Elements to or from a Unit. The term "firearms" includes, but is not limited to, any device which will or can be converted to expel a projectile by the action of an explosive or electrical charge or by the action of compressed air. Examples of "firearms" as described in this section include, but are not limited to, handguns, rifles, shotguns, stun guns, tasers, "B-B" guns, pellet guns and paintball guns. Additionally, cross-bows and arrows shall be considered a "firearm" pursuant to this Declaration.

#### **H. Animals.**

No Owner or Occupant may keep any animals other than a reasonable number of generally recognized household pets in the Community, as determined in the sole discretion of the Board of Directors. No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Elements, including Limited Common Elements, without prior written ACC approval. No pets are allowed on

any portion of the Common Elements, except for the designated dog walk area, if any; provided, however, an Owner or Occupant may walk a pet across the Common Elements to reach such dog walk area, if any, or to enter or exit the Condominium. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while on the Common Elements, but excluding the Limited Common Elements; provided, however, pets need not be leashed within fenced patio or porch areas when attended by a person. Feces left by pets upon the Common Elements or in Units, including the pet owner's Unit, must be removed promptly by the owner of the pet or the person responsible for the pet.

No potbellied pigs are permitted in the Condominium. No animals that the Board determines to be dangerous may be brought onto or kept in the Condominium. If the Board determines that an Owner's or Occupant's pet endangers any person or other pet or creates a nuisance or unreasonable disturbance in the Condominium, the Board may require that the pet be permanently removed from the Condominium upon seven days' written notice to such Owner or Occupant. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet and/or obtain a court order requiring the Owner or Occupant to do so. Notwithstanding the above, the Board may remove any pet without prior notice to the pet's owner if, in the Board's sole discretion, the pet presents an immediate danger to health, safety or property in the Condominium.

Any Owner or Occupant who keeps or maintains any pet in the Condominium agrees to indemnify and hereby holds harmless the Association, its Directors, Officers, and agents, from any loss, damage, claim or liability of any kind or character whatsoever related to such pet. The Board may establish additional rules regarding pets in the Condominium, which may include restrictions on the breeds, number and/or size of permitted pets.

#### **I. Parking.**

No Owner or Occupant may keep or bring onto the Condominium more than a reasonable number of vehicles per Unit, as determined in the sole discretion of the Board of Directors. Each Unit shall have at least one parking space assigned as a Limited Common Element, exclusively serving a particular Unit. Such assigned parking spaces are designated Limited Common Elements and may only be used by the Owner or Occupants to whom the parking spaces are assigned, and their guests and families.

Disabled and stored vehicles are prohibited from being parked on the Condominium. For purposes of this subparagraph, 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 14 consecutive days or longer without prior written consent of the Board.

Boats, jet-skis, trailers, buses, taxis, hearses, limousines, recreational vehicles, motor homes, campers, panel trucks, trucks with a cargo-load capacity of one ton or more, full-size vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), vehicles containing visible evidence of commercial use (such as tool boxes, tool racks, ladders, ladder racks or tow winches), and vehicles with commercial writings on their exteriors (except for law enforcement vehicles marked as such) are also prohibited from being parked in the Condominium, except: (1) as otherwise approved by the Board; or (2), in the case of service vehicles, on a temporary basis during daytime business hours or during emergencies for the purpose of serving a Unit. The Board may establish additional rules regarding vehicles and parking in the Condominium, which may include restrictions on the number of vehicles which may be parked in the Condominium.

If any vehicle is parked in the Condominium in violation of this Paragraph or the Association's rules, the Board or agent of the Association may tow or boot the vehicle after 24 hours written notice. Such notice shall: (1) be placed on the vehicle; (2) specify the nature of the violation; (3) warn of possible towing or booting; and (4) state the name and telephone number of a person to contact regarding the violation. If 24 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the Board or agent of the Association may have the vehicle towed or booted in

accordance with the original notice and without further notice. If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Unit or parking space, is obstructing the flow of traffic, is parked in a parking space which has been assigned as exclusively serving another Unit, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed or booted immediately.

The Association has no liability for any towing or booting in accordance with this subparagraph. Each Owner and Occupant hereby releases and holds harmless the Association, its Directors, Officers, agents and representatives, for any claim or damage from any such towing or booting. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines.

**J. Heating of Units in Colder Months; Cooling of Units in Warmer Months.**

In order to prevent breakage of water pipes during the colder months of the year and the growth of mold and mildew during warmer months of the year resulting in damage to any portion of the Condominium, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained at a setting of [no less than 60° Fahrenheit and no more than 82° Fahrenheit] (except during power failures or periods when heating equipment is broken). Owners and Occupants of Units shall take all steps possible on a timely basis to keep heating and cooling equipment, including, but not limited to, the thermostats, in good working order and repair. At any time when the heating or cooling equipment is not working properly, the Unit Owner or Occupant shall immediately inform the Association of this failure of the equipment and of the time needed to repair the equipment. In addition to any other remedies of the Association, the Board may fine any Owner or Occupant for violation of this paragraph.

**K. Rubbish and Trash.**

All rubbish, trash, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Elements (except for those portions of the Common Elements designated as recycling areas, if any) or Limited Common Elements outside the Unit, temporarily or otherwise, except in trash dumpsters. Rubbish, trash, and garbage shall be disposed of in appropriate sealed bags and either placed in the trash dumpsters or proper receptacles designated by the Board for collection or removal from the Condominium. All construction debris shall be removed from the Condominium property by the Owner, Occupant, or contractor whose work resulted in the debris.

**N. Unsightly or Unkempt Conditions.**

Owners and Occupants are prohibited from engaging in activities which cause disorderly, unsightly or unkempt conditions on the Common Elements or outside of a dwelling in the Condominium, such as the assembly and disassembly of motor vehicles and other mechanical devices. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the dwelling. Only appropriate outdoor items, such as neatly stacked firewood, potted plants and patio furniture may be kept outside the dwelling on any Unit. Owners and Occupants shall maintain such items in a neat and attractive condition, as determined in the Board's sole discretion.

**O. Garage Sales.**

Garage sales, yard sales, flea markets, or similar activities are prohibited unless approved in writing by the Board of Directors.



**P. Impairment of Dwellings and Easements.**

An Owner shall do no act nor any work that will impair the structural soundness or integrity of another Unit or impair any easement existing in the Condominium, or do any act nor allow any condition to exist that will adversely affect the other Units or their Owners or Occupants.

**Q. Life-Safety Systems.**

Owners and Occupants shall not tamper with or disengage any portion of the life-safety systems that serve the Condominium including, without limitation, the sprinkler heads and all branch and feed lines that support such sprinkler heads, and all fire control devices (such as smoke detectors and call boxes).

**R. Window Treatments.**

Unless otherwise approved in writing by the Board of Directors, all windows on a dwelling on a Unit which are exposed to a street or another dwelling shall have customary and appropriate window treatments. The Board may establish additional rules regarding window treatments, such as requirements for the location, type and exterior color of window treatments.

**S. Antennas and Satellite Dishes.**

Except as provided below or otherwise approved by the Board of Directors, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors in any portion of the Community. Direct broadcast satellite ("DBS") antennas and multi-channel multi-point distribution services ("MMDS") one meter or less in diameter and television broadcast service antennas may be installed in accordance with rules and regulations of the Federal Communication Commission ("FCC") and the Association. Any such devices shall be installed in the least conspicuous location available on the Unit that permits reception of an acceptable quality signal.

**13. LEASING AND OCCUPANCY**

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To preserve the character of the Community as predominantly owner-occupied, the Leasing of Units is prohibited, except as provided herein. "Leasing" means the occupancy of a Unit by any person(s) other than: (1) the Owner or a parent, child or spouse of an Owner (collectively referred to as "Authorized Occupant"); (2) an Authorized Corporate Occupant (defined below); or (3) a roommate of an Authorized Occupant or Authorized Corporate Occupant, when the Authorized Occupant or Authorized Corporate Occupant also occupies the Unit as his or her primary residence. An Authorized Corporate Occupant shall be an officer, director, shareholder, member or employee of an Owner that is a corporation; a manager or member of an Owner that is a limited liability company; a partner of an Owner that is a partnership; or a trustee or beneficiary of an Owner that is a trust; provided the Owner receives no rent or other consideration for such occupancy. The name of each Authorized Corporate Occupant shall be designated in writing to the Board and may not be changed more frequently than once every 12 months without the Board's written consent. A person's designation as an Authorized Corporate Occupant shall terminate automatically upon the termination of such person's relationship with the entity holding record title to the Unit.

**A. Permitted Leasing**

Leasing of Units is allowed only by: (1) a Grandfathered Owner; (2) a non-Grandfathered Owner who has received a Leasing Permit as provided below; (3) a non-Grandfathered Owner who has received a Hardship Permit as provided below; or (4) the Association. Leasing Permits and Hardship Permits shall be valid only as to a specific Owner and Unit and shall not be transferable between either Units or Owners (including a subsequent Owner of a Unit where such permit was issued to the Owner's predecessor-in-title).

**(1) Leasing Permits.**

The Board of Directors shall approve an Owner's request for a Leasing Permit if the total number of current, outstanding Leasing Permits plus Grandfathered Units is less than six (6); provided, however, a Leasing Permit shall not be issued to any Owner if the Unit is shown on the Association's books and records to be more than 30 days past due in any assessment or charge or if the Owner is in violation of the Association Legal Documents. Owners who have been denied a Leasing Permit shall be placed on a waiting list to be issued such a permit, if they so desire, when the above conditions have been satisfied. 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.

**(2) Hardship Permits.**

If the inability to lease will result in an undue hardship to the Owner, then the Owner may seek to lease on a hardship basis, for a term not to exceed one year, by applying to the Board of Directors for a Hardship Permit. The Board may approve or deny an Owner's request for a Hardship Permit in its discretion after considering the following factors: (1) the nature, degree, and likely duration of the hardship; (2) the harm, if any, which will result to the Community if such permit is issued; (3) the number of outstanding Hardship Permits; (4) the Owner's ability to cure the hardship; and (5) whether previous Hardship Permits have been issued to such Owner; provided, however, a Hardship Permit shall not be issued to any Owner if the Unit is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, if the Owner is in violation of the Association Legal Documents.

A "hardship" as described herein shall include, but not be limited to, the following situations: (1) when the Board determines that an Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six months from the date that the Unit was placed on the market, sell the Unit, except at a price below the current appraised market value, after having made reasonable efforts to do so; (2) when the Board determines that an Owner must temporarily relocate out of the metropolitan-Atlanta area for employment purposes and intends to return to reside in the Unit within one year; or (3) an Owner dies and the Unit is being administered by his or her estate.

Unless otherwise determined by the Board, a Hardship Permit authorizes an Owner to lease the Unit once for a term not to exceed one year.

**(3) Expiration and Revocation of Permits.**

Leasing Permits and Hardship Permits are automatically revoked upon: (1) the sale or transfer of the Unit to a third party (excluding sales or transfers to an Owner's spouse); (2) the failure of an Owner to lease his or her Unit for 90 consecutive days at any time after the issuance of such permit; or (3) the occupancy of the Unit by the Owner. The Board also shall have the power to revoke any Leasing Permit or Hardship Permit issued to any Owner if the Unit is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, if the Owner is in violation of the Association Legal Documents.

A Hardship Permit shall be revoked automatically if, during the term of such permit, the Owner is approved for and receives a Leasing Permit. An Owner may apply for an additional Hardship Permit at the expiration or revocation of a previous one.

**B. General Leasing Provisions**

**(1) Notice and Approval.**

All leases shall be in writing and in a form approved by the Board of Directors prior to the effective date of the lease. At least seven days before entering into a lease, the Owner shall provide the

Board with: (1) a copy of the proposed lease; (2) the names, phone numbers, work locations and work phone numbers of all of the proposed Occupants of the Unit; (3) the Owner's primary residence address and phone number, work location and work phone number; and (4) such other information required by the Board. If the form of a lease is disapproved, the Board shall notify the Owner what changes are required to bring the lease into compliance with the Association Legal Documents. Nothing herein gives the Board the right to approve or disapprove a proposed Occupant; the Board's approval or disapproval shall be limited to the form of the proposed Occupant. Within 10 days after executing a lease for a Unit, the Owner shall provide the Board with a copy of the executed lease.

**(2) Lease Terms.**

Units may be leased only in their entirety; no rooms or fractions of Units may be leased without prior written Board approval. There shall be no subleasing of Units or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one year.

**(3) Lease Administration Fee.**

In addition to annual assessments, special assessments, Capital Contribution Assessments and other charges provided for under this Declaration, an Owner who is issued a Leasing Permit or Hardship Permit shall be required to pay to the Association a Leasing Administration Fee of \$200.00 at the time a lease is executed or an occupancy relationship is created hereunder. The Lease Administration Fee shall constitute a specific assessment as described in this Declaration.

**(4) Liability for Assessments; Compliance.**

The Owner must provide the Occupant copies of the Association Legal Documents. The following provisions are incorporated into each lease of any Unit, whether or not expressly stated therein, and into the terms of any tenancy or occupancy even if no written lease or agreement exists between the Owner and the Occupant:

**(a) Compliance with Association Legal Documents.**

All terms defined in the Declaration of Protective Covenants and Easements for Habersham Pointe are incorporated herein by this reference. The Owner and each Occupant shall comply with all provisions of the Association Legal Documents. The Owner and Occupants are responsible for violations by any guests of the Unit and may be sanctioned for any such violation.

If a Unit is leased or occupied in violation of the Association Legal Documents, or if the Owner, Occupant or guest violates the Association Legal Documents, the Association's Board of Directors shall be authorized to take all enforcement actions against the Owner and/or Occupant authorized under the Association Legal Documents.

**(b) Use of Recreational Facilities.**

The Owner transfers and assigns to the Occupant, for the term of the lease, all rights and privileges the Owner has to use any recreational facilities on the Common Elements.

**(c) Liability for Assessments.**

When an Owner who is leasing his or her Unit fails to pay an assessment or any other charge to the Association when due, the delinquent Owner hereby consents to the assignment of any rent received from the Occupant during the period of the

delinquency. In such case, upon request by the Board, the Occupant shall pay to the Association all unpaid assessments and other charges payable during and prior to the term of the lease and any other period of occupancy. However, the Occupant 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 the Occupant shall reduce, by the same amount, the Occupant's obligation to make monthly rental payments to the Owner. If the Occupant fails to comply with the Board's request to pay assessments or other charges, such failure shall be deemed a violation of the Declaration and, in addition to all other enforcement rights, the Occupant shall pay to the Association all amounts authorized under the Declaration as if the Occupant were the Owner of the Unit. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

### **C. Enforcement**

If a Unit is leased or occupied in violation of the Association Legal Documents, or if the Owner, Occupant or guest violates the Association Legal Documents, such violation is deemed to be a default under the terms of any lease or occupancy and the Association may require the Owner to evict the Occupants. In addition to all other remedies permitted by this Declaration, such default authorizes the Owner and/or the Association, as the Owner's delegate and attorney-in-fact, to terminate the lease and/or occupancy and to evict all Occupants, without liability, in accordance with Georgia law. In any such eviction action by the Association, the Association may terminate the Occupancy rights upon 15 days notice, notwithstanding any notice requirement in the lease or occupancy terms. Once the Association invokes its right to terminate the lease or occupancy and evict the Occupant(s), the Owner no longer has the right to extend or revive the terminated occupancy in any way.

### **D. Grandfathering Definitions**

#### **(1) Grandfathered Owner**

"Grandfathered Owner" means an Owner who is lawfully leasing his or her Unit on the Effective Date. To qualify as a Grandfathered Owner, the Owner must, within 30 days of the Effective Date, provide the Board with a copy of the lease in effect on the Effective Date. Grandfathering shall apply only to the Unit owned by such Grandfathered Owner on the Effective Date. Grandfathering shall automatically expire and any lease of the Unit shall automatically terminate on the earlier of: (1) the date the Grandfathered Owner conveys title to the Grandfathered Unit to any Person (other than the Owner's spouse); (2) the date the Owner of the Grandfathered Unit occupies the Unit as his or her primary residence; (3) the date that all current Occupants of the Grandfathered Unit vacate and cease to occupy the Unit and is not rented again in 90 days; (4) the date the Grandfathered Owner violates any provision of the Association Legal Documents; or (5) the date the Grandfathered Owner is shown on the Association's books and records to be more than 30 days past due in any assessment or charge.

#### **(2) Grandfathered Unit**

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

## **14. TRANSFER OR SALE OF UNITS**

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An Owner intending to transfer or sell a Unit or any interest in a Unit shall give the Board of Directors written notice of such intention within seven days after executing the transfer or sales documents. As part of the notice, the current Owner shall furnish the Board the name and address of the intended grantee and such other information required by the Board. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven days after receiving title to a Unit, the purchaser or grantee of the Unit shall give the Board written notice of his or her ownership of the Unit. As part of the notice, the new Owner shall furnish the Owner's name, mailing address and such other information required by the Board.

## **15. INSURANCE**

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The Association, acting through its Board of Directors, shall obtain and maintain at all times, as a Common Expense, insurance as required by Section 44-3-107 of the Act, and as required herein, and as determined by the Board of Directors with regards to both limits of insurance and coverage. In accordance with the Act, the property insurance shall, at a minimum, afford fire and extended coverage insurance for and in an amount consonant with the full replacement value of the building(s) and other structures on the Condominium. Such coverage shall include all of the Units and the fixtures initially installed therein by Declarant and replacements thereof up to the value of those initially installed by Declarant, but shall not include any improvements or additions (including wall coverings and fixtures) made by or on behalf of any Owner other than those made by Declarant and shall exclude furnishings and other personal property within a Unit.

All insurance purchased by the Association pursuant to this Article shall run to the benefit of the Association, the Board of Directors, 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 Board of Directors shall make available for review by Owners a copy of the Association's insurance policy to allow Owners to assess their personal insurance needs and each Owner shall have the right to obtain additional coverage at his, her or its own expense.

All insurance coverage for the Association shall be written in the name of the Association as trustee for itself, each of the Owners, and the Mortgagees of Owners, if any. It shall be the duty of the Board of Directors at least every two (2) years to conduct an insurance review to determine if the policy in force is adequate to meet the needs of the Association and to satisfy the requirements of Section 44-3-107 of the Act. Such responsibility may be performed, and shall be deemed reasonably performed, by the Board requesting the Association's insurance agent to verify that insurance policies in existence meet the needs of the Association and satisfy the requirements of Section 44-3-107 of the Act.

### **A. Blanket Hazard Insurance.**

The Board of Directors shall utilize commercially reasonable efforts to secure a blanket hazard insurance policy providing "special perils" coverage in an amount equal to full replacement cost, before application of deductibles, of all structures located on the Condominium as required by Section 44-3-107 of the Act. If "special perils" 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 commercially reasonable efforts to obtain policies that will provide the following:

(1) for any of the following that are not named as insureds 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;

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

(3) until the expiration of 10 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 of Directors, or any of their agents, employees, or household members, nor be canceled for nonpayment of premiums;

(4) the master policy may not be canceled, substantially modified, or subjected to nonrenewal without at least 30 days prior notice in writing to the Board of Directors and all Mortgagees of Units; and

(5) an agreed value endorsement and an inflation guard endorsement.

**B. Licensing of 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. Power of the Board to Adjust Losses.**

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

**D. No Contribution.**

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 Directors of all structural improvements made by the Owner to his, her or its 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 his, her or its expense and personal property belonging to such Owner, shall file a copy of such individual policy or policies with the Board of Directors within 30 days after the purchase of such insurance. Such Owner shall also promptly notify, in writing, the Board of Directors in the event such policy is cancelled.

**E. Additional Insurance.**

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

(1) public liability insurance in amounts no less than required by Section 44-3-107 of the Act, which insurance policy shall contain a cross liability endorsement;

(2) workers' compensation insurance if and to the extent necessary to meet the requirements of law;

(3) Directors' and Officers liability insurance with a limit of at least \$1,000,000.00

(4) fidelity bonds or employee dishonesty insurance, covering Officers, Directors, employees, and other Persons handling or responsible for the Association's funds. Such bonds or insurance shall be in an amount consistent with the best business judgment of the Board of Directors, but in no event less than one-quarter of the annual assessments from all members plus the reserve funds in the custody of the Association at any time during the term of the bond or policy;. The bond or policy must provide that it may not be canceled, substantially modified or subject to non-renewal without at least 30-dayss prior written notice to the Association. The fidelity coverage described herein required may be reduced based on the implementation of financial controls that take one or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two members of the Board of Directors must sign any checks written on the reserve account; and

(5) such other insurance as the Board of Directors may determine to be necessary or desirable including, for example, but not limited to: coverage of the following types of property contained within a Unit, regardless of ownership: (a) fixtures, improvements and alterations that are part of the building or structure; and (b) appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping.

**F. Survey and Floor Plans Control.**

Insurance carried by the Association as a Common Expense shall not be required to include: (a) any part of a Unit that is not depicted on the original Survey and Floor Plans; or (b) any part of a Unit that was not included as part of the collateral for the initial loan made for the initial purchase of the Unit, nor shall the Association include public liability insurance for individual Owners for liability arising within the Unit.

**G. No Priority Over First Mortgagees.**

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. Owners' Insurance Responsibilities.**

Every Owner shall be obligated to obtain and maintain at all times insurance covering those portions of his, her or its 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 such Owner fails to obtain insurance as required by this Section, the Association may purchase such insurance on behalf of the Owner and assess the cost thereof to the Owner, to be collected in the manner provided for collection of assessments as set forth hereinabove. The insurance purchased by the Association shall not cover claims against an Owner due to accidents occurring within his, her or its Unit, nor casualty or theft losses to the contents of an Owner's Unit or Limited Common Elements. It shall be the obligation of the individual Owners, if such Owner so desires, to purchase and pay for insurance as to all such other risks not covered by the insurance carried by the Association.

**I. Insurance Deductibles.**

In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the Person or Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected owner's portion of the total cost of repair. Notwithstanding the foregoing, 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 the deductible pertaining to his, her or its Unit, if any. If any Owner or Owners fail to pay the deductible when required under this Section, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to Paragraph 8 of this Declaration; provided, however, where the deductible is for insurance required under the Act, no Owner shall be assigned more than \$2,500, 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 the payment of assessments owed to the Association under this Declaration, then 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.

## **16. REPAIR AND RECONSTRUCTION AFTER CASUALTY DAMAGE**

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In the event of damage to or destruction of any structure on the Condominium, the Board of Directors shall arrange for and supervise the prompt repair or reconstruction of such structure, with such improvements or modifications it deems appropriate, unless 80% of the Owners, including the Owner or Owners of any damaged Unit or Units, vote not to do so. The repair and reconstruction of the structure shall include improvements and modifications necessitated by changes in applicable building codes, but shall not include improvements and betterments not covered by the insurance. In the event of substantial damage or destruction, each Eligible Mortgage Holder shall be entitled to written notice of the damage, and nothing in these documents shall be construed to afford a priority to any Unit Owner with respect to the distribution of proceeds to any such Unit.

### **A. Construction Fund.**

Any insurance proceeds collected on a claim against any Association hazard policy and any special assessments collected as described below shall constitute a construction fund to be used by the Board for repair or restoration provided for in this Paragraph.

### **B. Proceeds.**

The net proceeds of the insurance if the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to failure of the Association to maintain coverage as provided in this Declaration, the additional cost shall be a Common Expense. If, for any reason, the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair, as determined by the Board, the additional costs shall be assessed against the Owners of the Unit(s) damaged in proportion to the damage to the Unit(s). In the case of insufficient funds to cover damage to the Common Elements, the additional costs shall be assessed against all Owners. This assessment shall not be considered a special assessment as described in this Declaration. 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. Encroachments.**

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

## **17. EMINENT DOMAIN**

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Whenever any portion of the Common Elements (other than Limited Common Elements) is taken by, or conveyed in lieu of condemnation or eminent domain, the Board of Directors shall give notice thereof to each Owner and the provisions of the Act shall prevail and govern. If any structure on the Common Elements is so taken or conveyed, the Board shall arrange for and supervise the prompt reconstruction of such structure, to the extent sufficient Common Elements is available, with such improvements or modifications it deems appropriate, unless 80% of the Owners vote not to do so.

If proceeds from the condemning authority are not sufficient to defray the Board's estimated or actual costs of reconstruction, including, but not limited to, any professional fees and premiums for construction bonds the Board deems necessary, the Board may levy a special assessment against all Owners without the necessity of a membership vote or compliance with any other requirements for approval



of special assessments in this Declaration. Any surplus funds remaining after the reconstruction is completed shall be common funds of the Association to be used as determined by the Board.

If 80% of the Owners vote not to reconstruct such improvement, any proceeds received for a taking of the Common Elements (other than Limited Common Elements), or a conveyance in lieu of condemnation or eminent domain shall, at the option of the Board, either be allocated to the Owners pursuant to O.C.G.A. § 44-3-97(a), as amended, or be deposited into the Association's operating account or reserve account to be applied to Common Expenses. Each 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 Unit Owner in the distribution of proceeds to such Unit.

## **18. EASEMENTS**

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### **A. Easements for Utilities.**

Each Unit Owner shall have an easement in common with the other Owner(s) of the other Unit(s) to use all pipes, ducts, wires, cables, conduits, chutes, utility lines and other physical facilities which are Common Elements serving the Owner's Unit. Additionally, each Unit shall be subject to an easement in favor of the other Owner or Owners for the use of such pipes, ducts, wires, cables, conduits, chutes, utility lines and other physical facilities which are Common Elements serving the Condominium. A general easement for the benefit of all Owners is reserved through the Condominium, including the Units, as may be required for installation, maintenance, repair or replacement of pipes, ducts, wires, cables, conduits, chutes, utility lines and other physical facilities which may now or hereinafter become Common Elements necessary to adequately serve the Condominium.

### **B. Easement for Association Maintenance.**

There is hereby reserved to the Association and its designee, an easement and right across all portions of the Community (including, but not limited to, the Units), to allow the Association to fulfill the maintenance obligations described in this Declaration. This easement shall be exercised with a minimum of interference to the quiet enjoyment of the Owner's property, reasonable steps shall be taken to protect the Owner's property, and any Person causing damage to the Owner's property shall repair the damage at its sole expense.

### **C. Easement Regarding Habersham Marina Road.**

The Community constituting the Common Elements shall be conveyed subject to a non-exclusive easement to the Unit Owners, their successors or assigns, guests, members of their family and to the lawful governmental authorities for health, safety or police power functions for vehicular and pedestrian ingress and egress over and across the drives and parking areas for purposes of access to and from Habersham Marina Road; provided, however, this easement may not be utilized in a manner which would adversely affect the use and enjoyment of any Unit.

### **D. Encroachments.**

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

### **E. Public in General.**

The easements and rights created in this Paragraph do not, are not intended to, and shall not be construed to create any easements or rights in or for the benefit of the general public; provided, however, nothing set forth herein shall in any way limit or restrict any existing easements or rights already granted to the public as such easements or rights are previously recorded in the Forsyth County, Georgia records. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon

15 days prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Condominium), all or any portion of the Condominium that, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

## **19. MORTGAGEE'S RIGHTS**

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**A.** Unless at least 2/3 of the Eligible Mortgage Holders and 2/3 of the Unit Owners give their consent, the Association or the membership shall not:

- (1)** by act or omission seek to abandon or terminate the Condominium;
- (2)** change the pro rata interest or obligations of any individual Unit for the purpose of (a) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or (b) determining the pro rata share of ownership of each Unit in the Common Elements;
- (3)** partition or subdivide any Unit in any manner inconsistent with the provisions of this Declaration;
- (4)** 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
- (5)** 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 subparagraph shall not be construed to reduce the percentage vote that must be obtained from such Eligible Mortgage Holders or Unit Owners where a larger percentage vote is otherwise required by the Act or the Condominium Instruments for any of the actions contained in this Paragraph.

**B.** Where the Eligible Mortgage Holder holding a first Mortgage of record, a secondary purchase money Mortgage of record (provided that neither the grantee nor any successor grantee on the secondary purchase money Mortgage is the seller of the Unit) or other purchaser of a Unit obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be liable, nor shall the Unit be subject to a lien, for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer, its successors and assigns. Additionally, such acquirer 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.

**C.** Upon written request to the Association, identifying the name and address of the holder and the Unit number or address, any Eligible Mortgage Holder will be entitled to timely written notice of:

- (1)** 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;
- (2)** 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 60 days, and any default in the performance by an individual Unit Owner of any other obligation

under the Condominium Instruments which is not cured within 60 days;

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

(4) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders, as specified herein.

## **20. AUTHORITY AND ENFORCEMENT**

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### **A. Compliance with Condominium Instruments.**

All Owners, Occupants and their guests shall comply with the Condominium Instruments. The Association, and in an appropriate case, one or more aggrieved Owners, may take action to enforce the terms of the Condominium Instruments directly against all Violators. However, if an Owner's family member, guest or Occupant violates the Condominium Instruments, the Association, in its sole discretion, is permitted to enforce the terms of the Condominium Instruments against: (1) only the Owner; (2) only the violating family member, guest or Occupant; or (3) both the Owner and the violating family member, guest or Occupant. Notwithstanding anything herein to the contrary, the Owner of the Unit is always ultimately responsible for his or her own actions and the actions of all family members, Occupants and guests of such Unit.

Nothing herein shall be construed to affect the rights of an aggrieved Owner or Occupant to proceed independently for relief from interference with his or her personal or property rights against a Person violating the Condominium Instruments. The Board of Directors may, in its discretion, require the aggrieved Owner or Occupant to independently pursue all available remedies under Georgia law against the Violator before the Association intervenes and commences enforcement action against such Violator.

### **B. Types of Enforcement Actions.**

In the event of a violation of the Condominium Instruments, the Association shall have the power to take any or all of the following actions separately or simultaneously; provided, however, all suspensions and fines shall comply with the procedures described below and nothing herein shall authorize the Association or the Board to deny ingress and egress to or from a Unit:

- (1) Suspend all Violators' rights to use the Common Elements;
- (2) Suspend the voting rights of a violating Owner;
- (3) In accordance with the Act, suspend the utility services provided as a Common Expense to the Owners;
- (4) Impose reasonable fines against all Violators, which shall constitute a lien on the violating Owner's Unit;
- (5) Use self-help to remedy the violation;
- (6) Bring an action for permanent injunction, temporary injunction and/or specific performance to compel the Violator to cease and/or correct the violation; and
- (7) Record in the Forsyth County land records a notice of violation identifying any uncured violation of the Condominium Instruments regarding the Unit.

**C. Suspension and Fining Procedure.**

Except as provided below, before imposing fines or suspending right to use the Common Elements or the right to vote, the Association shall give a written violation notice to the Violator as provided below.

**(1) Violation Notice**

The written violation notice to the Violator shall:

- (a)** Identify the violation, suspension(s) and/or fine(s) being imposed; and
- (b)** Advise the Violator of the right to request a violation hearing before the Board of Directors to contest the violation or request reconsideration of suspension(s) and/or fine(s).

Notwithstanding the Violator's right to request a violation hearing, suspension(s) and/or fine(s) shall commence on the date of the written violation notice, unless a later date is specified in such notice.

**(2) Violation Hearing**

If the Violator submits a written request for a violation hearing within 10 days of the date of the violation notice described above, then the Board of Directors shall schedule and hold, in executive session, a violation hearing. If a Violator fails to timely request a violation hearing, such Violator loses the right to contest the violation and request reconsideration of the suspension(s) and/or the fine(s). If a Violator timely requests a violation hearing, the Violator shall have a reasonable opportunity to address the Board regarding the violation; provided, however, the Board may establish rules of conduct for the violation hearing, including but not limited to, limits on the amount of time one person can speak and limits on the number of participants who may be present at one time. The minutes of the violation hearing shall contain a written statement of the results of such hearing.

**(3) No Violation Notice and Hearing Required**

No violation notice or violation hearing shall be required to:

- (a)** impose late charges on delinquent assessments;
- (b)** suspend a violating Owner's voting rights if the Violator's Unit is shown on the Association's books and records as more than 30 days past due in any assessment or charge;
- (c)** impose late charges on delinquent assessments;
- (d)** suspend a violating Owner's voting rights if the Violator's Unit is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violating Owner's right to vote shall be automatic and shall continue until the violation no longer exists or the Board of Directors otherwise reinstates such rights in writing;
- (e)** suspend a Violator's right to use the Common Elements if the Violator's Unit is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the Violator's right to use the Common Elements shall be automatic (which shall allow the Association to tow and/or boot a Violator's vehicle located on the Common Elements without complying with the Suspension and Fining Procedures described above);
- (f)** engage in self-help in an emergency;
- (g)** impose fines for each day of a continuing violation, in which case, each day the violation continues or occurs again constitutes a separate violation and fine(s) may be imposed on a per diem basis without any further notice to the Violator; or

- (h) suspend utilities pursuant to the Act.

**D. Self-Help.**

In addition to all other enforcement rights granted herein, the Board of Directors may elect to enforce any provision of the Condominium Instruments by self-help without the necessity for compliance with the Suspension and Fining Procedures described above.

By way of example and not limitation, the Association or its duly authorized agent shall have the authority to tow vehicles that are in violation of parking regulations and enter a Unit or any portion of the Common Elements to abate or remove any structure, thing or condition that violates the Condominium Instruments. Unless an emergency exists, before exercising self-help, the Association shall give the Violator at least two days prior written notice. Such notice shall request that the Violator remove and abate the violation and restore the Unit to substantially the same condition that existed prior to the structure, thing or condition being placed on the Unit and causing the violation. Such removal, abatement and restoration shall be accomplished at the Violator's sole cost and expense. If the same violation occurs again on the same Unit, the Association may exercise self-help without any further notice to the Violator.

**E. Injunctions and Other Suits at Law or in Equity.**

All Owners agree and acknowledge that there may not be adequate remedies at law to enforce the Condominium Instruments. Therefore, in addition to all other enforcement rights granted herein, the Association is hereby entitled to bring an action for permanent injunction, temporary injunction and/or specific performance to compel a Violator to cease and desist and/or correct any violation.

**F. Costs and Attorney's Fees for Enforcement Actions.**

In any action taken by the Association to enforce the Condominium Instruments, the Association shall be entitled to recover from the Violator, any and all costs incurred by the Association, including but not limited to attorneys' fees actually incurred, all of which shall constitute a lien against the violating Owner's Unit.

**G. Failure to Enforce.**

The Board of Directors has the sole discretion to decide which, if any, enforcement action to pursue against each Violator. The failure of the Board to enforce any provision of the Condominium Instruments shall not be deemed a waiver of the right of the Board to do so thereafter. No right of action shall exist against the Association for failure to enforce if the Board of Directors determines that:

- (1) the Association's position is not strong enough to justify taking enforcement action;
- (2) a particular violation is not of such a material nature as to be objectionable to a reasonable person;
- (3) a particular violation is not of such a material nature to justify the expense and resources to pursue or continue to pursue enforcement action;
- (4) the aggrieved Owner or Occupant asserting a failure of enforcement has not independently pursued all available individual remedies under Georgia law; or
- (5) the Association enforces only against an Owner for the violation of the Owner's family member, guest or Occupant or the Association does not enforce against the Owner and enforces only against the violating family member, guest or Occupant.

## 21. **AMENDMENTS**

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### **A. Member Approval Procedure.**

Except where a higher vote is required for action under any other provisions of this Declaration, the Bylaws or by the Act, this Declaration may be amended with the approval of Owners holding 2/3 of the total Association vote. 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 Forsyth County, Georgia land records.

### **B. Default Approval Procedure After Owner Non-Response.**

It is recognized that, when Owners fail to participate in an amendment vote because of apathy or other reasons which are not based on any disagreement with a proposed amendment, important amendments to the Declaration or Bylaws may have no chance of approval, with the two-thirds (2/3) supermajority voting requirements established under the Act. It also is recognized that supermajority voting requirements are important for Owner actions which are as significant as amending this Declaration or the Bylaws. To balance these competing concerns, this subparagraph establishes a mechanism which provides every eligible Owner an opportunity to issue a vote of approval, disapproval or abstention on proposed amendments to the Declaration or Bylaws, but also a realistic mechanism for approving important amendments, without the damaging consequences of Owner non-response.

The Board shall issue notice of all proposed amendments to each Owner. With each such notice, the Board shall include a copy of the proposed amendment, along with a consent form or ballot, which complies with the requirements of the Bylaws. Each such consent form or ballot shall give Owners an opportunity to vote for, vote against or abstain from voting on the proposed amendment.

If the amendment is not approved or defeated by sufficient vote within 60 days of the amendment notice described above, then the Board may seek to obtain default approval from Owners under this subparagraph. In such case, the Board shall send default approval notice, by certified mail and to the address consistent with the notice provision of the Bylaws, to all Owners who have not returned consents or ballots on a proposed amendment within that 60-day period. This default approval notice also shall include a consent form or ballot, as provided above, along with a statement that the Owner's failure to return an executed consent form or ballot, marked with a vote for, a vote against, or an abstention from voting on the amendment, within 30 days of the date of such default approval notice, will be deemed consent to such amendment. If the Board does not receive such consent or ballot within that 30-day period, the Owner shall be deemed to have consented to and approved the amendment.

### **C. Eligible Mortgage Holder Approval.**

In addition to approval by the Owners as provided above, material amendments to this Declaration and the Bylaws must be approved by Eligible Mortgage Holders who represent at least 51% of the votes of 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 30 days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

### **D. Amendments to Comply with Law or Conform Documents.**

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend this Declaration and the Bylaws to comply with any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), the Department of

Housing and Urban Development ("HUD") and the Veterans Administration ("VA"), or to resolve conflicts between this Declaration, the Bylaws, the Articles, and applicable laws.

**E. Validity of Amendments.**

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

**22. GENERAL PROVISIONS**

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**A. Security.**

THE ASSOCIATION MAY, BUT SHALL NOT BE REQUIRED TO, PROVIDE MEASURES OR TAKE ACTIONS WHICH DIRECTLY OR INDIRECTLY IMPROVE SECURITY IN THE CONDOMINIUM. EACH OWNER, FOR HIMSELF OR HERSELF AND HIS OR HER OCCUPANTS, TENANTS, GUESTS, LICENSEES, AND INVITEES, ACKNOWLEDGES AND AGREES THAT THE ASSOCIATION IS NOT A PROVIDER OF SECURITY. THE ASSOCIATION HAS NO DUTY TO PROVIDE SECURITY IN THE CONDOMINIUM. FURTHERMORE, THE ASSOCIATION DOES NOT GUARANTEE THAT OWNERS, OCCUPANTS AND OTHER PEOPLE WILL NOT COMMIT CRIMINAL ACTS IN THE CONDOMINIUM OR THAT UNAUTHORIZED PEOPLE WILL NOT GAIN ACCESS TO THE CONDOMINIUM. IT SHALL BE THE RESPONSIBILITY OF EACH OWNER TO PROTECT HIS OR HER PERSON AND PROPERTY, AND ALL RESPONSIBILITY TO PROVIDE SUCH SECURITY SHALL LIE SOLELY WITH EACH OWNER. THE ASSOCIATION SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF MEASURES UNDERTAKEN.

**B. Parking Spaces, Vehicles and Storage Spaces.**

The Association shall not be held liable for any loss or damage arising from theft, vandalism, malicious mischief, or any loss or damage resulting from calcium deposits, water or acid damage, or any other loss or damage to any property placed or kept in any parking space or storage space in the Condominium or in any area designated by the Board for other parking. Each Owner or Occupant with use of a parking space, storage space or in any area designated by the Board for other parking who places or keeps a vehicle and/or any personal property in the vehicle, parking space, or storage space or in any area designated by the Board for other parking does so at his, her or its own risk.

**C. Unit Keys.**

At the request of the Association, each Unit Owner, by acceptance of a deed to a Unit, agrees to provide the Association with a key to the Unit (and the security alarm code, if any) to be used by the Association for maintenance, emergency, or life-safety purposes as provided in Paragraph 10 of this Declaration (and for pest control, if necessary). The Association shall not be liable for any loss or damage due to its holding such key, or use of such key for the purposes described above and each Owner shall indemnify and hold harmless the Association and its officers and directors against any and all expenses, including reasonable attorneys' fees actually incurred by or imposed upon the Association or its officers or directors in connection with any action, suit, or other proceeding (including settlement of any such action, suit or proceeding) brought by the Owner or the Owner's family, tenants, guests, employees, invitees, Occupants, or licensees against the Association or its officers or directors arising out of or relating to its holding or use of such key for the purposes described above.

**D. Party Walls.**

(1) **General Rules of Law to Apply.** Each wall built as a part of the original construction of the Units which shall serve and separate any two adjoining Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Paragraph, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

(2) **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

(3) **Damage and Destruction.** If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has benefited by the wall may restore it, and the other Owner or Owners thereafter who are benefited by the wall or fence shall contribute to the cost of restoration thereof in equal proportions, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(4) **Right to Contribution Runs With Land.** The right of any Owner to contribution from any other Owner under this Paragraph shall be appurtenant to the land and shall pass to such Owner's successors in title.

(5) **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Paragraph, each party shall appoint one arbitrator. Should any party refuse to appoint an arbitrator within 10 days after written request therefor by the Board, the Board shall appoint an arbitrator for the refusing party. The arbitrators thus appointed shall appoint one additional arbitrator and the decision by a majority of all three arbitrators shall be binding upon the parties. Compliance with this subparagraph shall be a condition precedent to any right of legal action that either party may have against the other in a dispute arising hereunder.

**E. Dispute Resolution.**

Before filing any lawsuit or administrative proceeding against the Association, the Board of Directors, any Officer or Director, or the Association's property manager, an Owner or Occupant shall request in writing and attend a meeting with the Board to discuss an amicable resolution of any dispute. The Owner or Occupant shall, in such request and at the meeting, make a good faith effort to explain the grievance and resolve the dispute. Upon receiving a request for a meeting, the Board shall give notice of the date, time and place of the meeting to the person requesting the meeting. The Board shall schedule this meeting for a date not less than seven or more than 30 days from the date of receipt of the meeting request, except with the approval of the Owner or Occupant. After the meeting, the Board shall have a reasonable opportunity to address the Owner's or Occupant's grievance before a suit is filed.

**F. No Discrimination.**

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

**G. Implied Rights.**

In addition to express rights, the Association may exercise any right or privilege implied from the existence of any express right or privilege or reasonably necessary to effectuate any such right or privilege.

**H. Electronic Records, Notices and Signatures.**

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



**I. Use of Words “Habersham Pointe.”**

“Habersham Pointe is a service mark of the Association. No person shall use the term “Habersham Pointe” or any derivative in any printed or promotional material without the Association’s prior written consent. However, Owners may use the terms “Habersham Pointe”<sup>sm</sup> in printed or promotional matter where such term is used solely to specify that particular property is located within the Condominium. Any use of the name “Habersham Pointe”<sup>sm</sup> shall be in a manner in which proprietary rights to such name are protected.

**J. Duration.**

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

**K. Severability.**

Invalidation of any one of these covenants or restrictions, by judgment, 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.

**23. PREPARER**

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This Declaration was prepared by Julie McGhee Howard , Weissman, Nowack, Curry & Wilco, P.C., One Alliance Center, 4th Floor, 3500 Lenox Road, Atlanta, Georgia 30326.

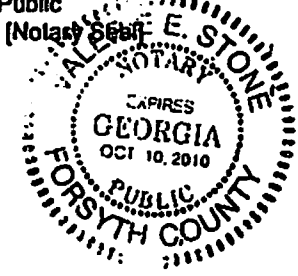
IN WITNESS WHEREOF, the undersigned Officers of Habersham Pointe Condominium Owners Association, Inc., hereby certify that the above amendment to the Original Declaration and the following amendment to the Original Bylaws were duly adopted by the required majority of the Association and its membership,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

This 10<sup>th</sup> day of JULY, 2009.

Sworn to and subscribed to before me this 10 day of JULY, 2009.

William E. Stone  
Witness

Valerie Stone  
Notary Public



Habersham Pointe Condominium Owners ASSOCIATION, INC.

By: Charles P. Antor (Seal)  
President

Attest: Shirley H. Bleck (Seal)  
Secretary

[CORPORATE SEAL]

## EXHIBIT "A"

### PHASE I SUBMITTED PROPERTY

ALL that tract or parcel of land lying and being in Land Lot 144 of the 2nd District, and 1st Section of Forsyth County, Georgia, being HABERSHAM-LANIER POINTE CONDOMINIUM, Phase I, a Condominium created pursuant to the Declaration for HABERSHAM-LANIER POINTE CONDOMINIUM, dated May 28, 1985, and being more particularly described as follows:

TO ARRIVE AT THE TRUE POINT OF BEGINNING, commence at a point at the southeast corner of Land Lot 144; run thence North 00 degrees 31 minutes 49 seconds East along the East Land Lot Line of Land Lot 144, a distance of 189.88 feet to a point; running thence North 00 degrees 29 minutes 12 seconds East along the East Land Lot Line of Land Lot 144 a distance of 249.42 feet to the TRUE POINT OF BEGINNING: running thence North 79 degrees 00 minutes 10 seconds West 320.70 feet to a point on the northeasterly right of way line of Habersham Marina Road; running thence North 26 degrees 50 minutes 19 seconds West along the northeasterly right of way line of Habersham Marina Road, 5.00 feet to a point; running thence North 34 degrees 54 minutes 58 seconds West, along the northeasterly right-of-way line of Habersham Marina Road, a distance of 89.89 feet to a point on the northeasterly right-of-way line of Habersham Marina Road; running thence North 29 degrees 23 minutes 58 seconds West 144.17 feet to a point; running thence North 39 degrees 39 minutes 09 seconds West 16.27 feet to a point; running thence North 44 degrees 29 minutes 46 seconds East, 131.29 feet to a point; running thence South 45 degrees 30 minutes 14 seconds East 121.00 feet to a point; running thence North 44 degrees 29 minutes 46 seconds East 87.00 feet to a point; running thence South 45 degrees 30 minutes 14 seconds East 291.75 feet to a point on the East Land Lot Line of Land Lot 144; running thence South 00 degrees 29 minutes 12 seconds West along the East Land Lot Line of Land Lot 144 a distance of 139.00 feet to the TRUE POINT OF BEGINNING, being a tract of land containing 2.19 acres as shown on individual plat of survey prepared by Mize Brothers, Inc., Clyde N. Mize, Georgia RLS No. 1625, entitled Habersham-Lanier Pointe, dated March 11, 1985.

AND

### PHASE II SUBMITTED PROPERTY

All that tract or parcel of land lying and being in Land Lot 144 of the 2nd District and 1st Section of Forsyth County, Georgia and being more particularly described as follows:

TO ARRIVE AT THE TRUE POINT OF BEGINNING commence at the southeast corner of Land Lot 144; run thence north 00°31'49" east along the east land lot line of Land Lot 144 a distance of 189.88 feet to a point; run thence north 00°29'12" east along the east land lot line of Land Lot 144 a distance of 388.42 feet to a point; run thence north 45°30'14" west 291.75 feet to the TRUE POINT OF BEGINNING; running thence south 44°29'46" west 87.00 feet to a point; running thence north 45°30'14" west 121.00 feet to a point; running thence south 44°29'46" west 131.29 feet to a point; running thence north 39°39'09" west 85.92 feet to a point; running thence north 46°26'53" east 163.70 feet to a point; running thence south 64°42'55" east 148.43 feet to a point; running thence south 01°20'09" west 4.00 feet to a point; running thence south 45°30'14" east 58.00 feet to the TRUE POINT OF BEGINNING; being a tract of land containing 0.58 acres as shown on individual plat of survey for Phase II, Habersham-Lanier Pointe, prepared by Mize Brothers, Inc., Clyde N. Mize, Georgia RLS#1625, dated 3/10/85.

AND

### PHASE III SUBMITTED PROPERTY

All that tract or parcel of land lying and being in Land Lot 144 of the 2nd District and 1st Section of Forsyth County, Georgia, and being more particularly described as follows:

TO ARRIVE AT THE TRUE POINT OF BEGINNING commence at a point at the southeast corner of Land Lot 144; run thence north 00°31'49" east along the east land lot line of Land Lot 144 a distance of 189.88 feet to a point; running thence north 00°29'12" east along the east land lot line of Land Lot 144 a distance of 388.42 feet to a point; running thence north 45°30'14" west 349.75 feet to a point; running thence north 01°20'09" east 4.00 feet to the TRUE POINT OF BEGINNING; running thence north 64°42'55" west 148.43 feet to a point; running thence north 46°26'53" east 40.00 feet to a point; running thence north 00°27'26" east 199.79 feet to a point; running thence north 46°34'02" east 82.93 feet to a point; running thence south 57°20'00" east 60.29 feet to a point; running thence south 01°20'09" west 135.30 feet to the TRUE POINT OF BEGINNING; being a tract of land containing 0.76 acres as shown on individual plat of survey for Phase III, Habersham-Lanier Pointe, prepared by Mize Brothers, Inc., Clyde N. Mize, Georgia RLS# 1625, dated 3/10/85.

**EXHIBIT "B"**

**UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS  
AND LIABILITIES FOR COMMON EXPENSES**

<b>Unit and Building Number</b>	<b>Ownership Percentage</b>
100-A	1.6667
101-A	1.6667
102-A	1.6667
103-A	1.6667
200-A	1.6667
201-A	1.6667
202-A	1.6667
203-A	1.6667
300-A	1.6667
301-A	1.6667
302-A	1.6667
303-A	1.6667
100-B	1.6667
101-B	1.6667
102-B	1.6667
200-B	1.6667
201-B	1.6667
202-B	1.6667
300-B	1.6667
301-B	1.6667
302-B	1.6667
100-C	1.6667
101-C	1.6667
200-C	1.6667
201-C	1.6667
300-C	1.6667
301-C	1.6667
100-D	1.6667
101-D	1.6667
102-D	1.6667
103-D	1.6667
200-D	1.6667
201-D	1.6667
202-D	1.6667
203-D	1.6667
300-D	1.6667
301-D	1.6667
302-D	1.6667
303-D	1.6667
100-E	1.6667
101-E	1.6667
200-E	1.6667
201-E	1.6667
300-E	1.6667
301-E	1.6667

100-F	1.6667
101-F	1.6667
102-F	1.6667
103-F	1.6667
104-F	1.6667
200-F	1.6667
201-F	1.6667
202-F	1.6667
203-F	1.6667
204-F	1.6667
300-F	1.6667
301-F	1.6667
302-F	1.6667
303-F	1.6667
304-F	1.6667
60 Units	100.00

**EXHIBIT “C”**

**AMENDED AND RESTATED BYLAWS**

**OF**

**HABERSHAM POINTE CONDOMINIUM  
ASSOCIATION, INC.**

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**PREPARED BY:**

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**JULIE M. HOWARD, ESQUIRE**

## 1. GENERAL PROVISIONS

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### A. Applicability.

These Bylaws provide for the self-government of Habersham Pointe Condominium Association, Inc. in accordance with the Georgia Condominium Act ("Act"), the Articles of Incorporation filed with the Secretary of State of Georgia, and the Amended and Restated Declaration of Condominium for Habersham Pointe, recorded in the Forsyth, Georgia land records ("Declaration").

### B. Name.

The name of the corporation is Habersham Pointe Condominium Association, Inc. ("Association").

### C. Definitions.

The terms used herein shall have their generally accepted meanings or the meanings specified in Paragraph 2 of the Declaration.

### D. Membership.

An Owner of a Unit shall automatically become a member of the Association upon taking title to the Unit and shall remain a member for the entire period of ownership. An Owner's spouse or Domestic Partner may exercise any of the membership powers and privileges of the Owner. If more than one Person holds title to a Unit, the membership shall be shared in the same proportion as the title, but there shall be only one membership and one vote per Unit. Membership does not 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. Membership shall be appurtenant to the Unit and shall be transferred automatically by conveyance of the Unit. Membership may be transferred only in connection with the transfer of the Unit.

### E. Entity Members.

If an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director or other designated agent of such corporation, manager or member of such limited liability company, partner of such partnership, beneficiary or other designated agent of such trust, or representative of such other legal entity shall be eligible to represent such entity in the affairs of the Association, including, without limitation, serving on the Association's Board of Directors. Such person's relationship with the Association, and any office or directorship held, shall terminate automatically upon the termination of such person's relationship with the entity that is the Owner of the Unit. Termination of the person's relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving and such vacancy may be filled in accordance with these Bylaws.

### F. Voting.

Each Unit shall be entitled to one vote, which vote may be cast by the Owner. When more than one Person owns a Unit, the vote for such Unit shall be exercised as they determine between or among themselves. In no event shall more than one vote be cast with respect to any Unit. If only one co-Owner or only an Owner's spouse or Domestic Partner attempts to cast the vote for a Unit, it shall be conclusively presumed that such vote is authorized for the Unit. If the co-Owners or an Owner and his or her spouse or Domestic Partner disagree about how to cast the Unit's vote, and two or more of them attempt to cast the Unit's vote, such Persons shall not be recognized and such votes shall not be counted.



If a Unit is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, if any Owner or Occupant of the Unit is in violation of the Association's Legal Instruments, or if the voting rights for such Unit have been suspended, the Owner of such Unit shall not be eligible to: (1) vote, either in person or by proxy; (2) act as proxy for any other Owner; (3) issue a written ballot or written consent; (4) be elected to the Board of Directors; or (5) vote as a Director (if serving on the Board of Directors). In establishing the total number of eligible votes for a quorum, a majority, or any other purposes, such Unit shall not be counted as an eligible vote.

**G. Electronic Communications.**

**(1) Records and Signatures.**

Whenever the Association's Legal Instruments require that a document, record or instrument be "written" or "in writing," the requirement is deemed satisfied by an electronic record if the Board of Directors has affirmatively published regulations permitting an electronic record or document as a substitute for a written item.

Whenever these Bylaws require a signature on a document, record or instrument, an electronic signature satisfies that requirement only if: (a) the Board of Directors has affirmatively published regulations permitting an electronic signature as a substitute for a written signature; and (b) the electronic signature is easily recognizable as a secure electronic signature which is capable of verification, under the sole control of the signatory, and attached to the electronic document in such a way that the document cannot be modified without invalidating the signature; or (c) the Board of Directors reasonably believes that the signatory affixed the electronic signature with the intent to sign the electronic document, and that the electronic document has not been modified since the signature was affixed.

**(2) Verification and Liability for Falsification.**

The Board of Directors may require reasonable verification of any electronic signature, document, record or instrument. Absent or pending verification, the Board may refuse to accept any electronic signature or electronic record that, in the Board's sole discretion, is not clearly authentic. Neither the Board of Directors nor the Association shall be liable to any Owner or any other Person for accepting or acting in reliance upon an electronic signature or electronic record that the Board reasonably believes to be authentic, or rejecting any such item which the Board reasonably believes not to be authentic. Any Owner or Person who negligently, recklessly or intentionally submits any falsified electronic record or unauthorized electronic signature shall fully indemnify the Association for actual damages, reasonable attorneys' fees actually incurred and expenses incurred as a result of such acts.

**2. MEMBERSHIP MEETINGS AND ACTIONS**

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**A. Annual Meetings.**

The purpose of the annual membership meeting shall be to elect Directors of the corporation and conduct other business that shall come before the meeting. The regular annual membership meeting shall be called during the first quarter of each year with the date, time, and location to be set by the Board of Directors. No annual membership meeting shall be set on a legal holiday.

**B. Special Meetings.**

Special membership meetings may be called for any purposes at any time by the Board of Directors or upon written petition of 15% of the Owners. Any such written petition by the Owners must identify the special meeting purpose on each page of the petition and must be for a purpose on which the Association membership is authorized to act under these Bylaws or the Declaration. The petition, with original signatures, must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of Owners have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special membership meeting for all

lawful purposes stated in the petition, at a date, time and location selected by the President. The Secretary shall send notice of such special membership meeting in accordance with these Bylaws within 30 days of the date of delivery of the petition to the Secretary. Except as provided herein, no business may be conducted at a special membership meeting unless notice thereof is included in the meeting notice.

**C. Notice of Meetings.**

The Secretary shall give notice of each annual or special membership meeting to the record Owner or Owners of each Unit, or to the Unit address, at least 21 days prior to each annual membership meeting and at least seven days prior to each special membership meeting. The notice shall state the date, time and location of the meeting, and for any special meeting, the purpose of the meeting. Giving notice as provided in these Bylaws shall be considered proper service of notice.

**D. Waiver of Notice.**

Waiver of notice of a membership meeting shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any membership meeting, either before or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of improper notice of the date, time, and location thereof and of any specific business being conducted at such meeting, unless such Owner specifically objects to improper notice at the time the meeting is called to order or the Owner objects to improper notice of the specific business before the business is put to a vote.

**E. Quorum.**

The presence, in person or by proxy at the beginning of the meeting, of Owners entitled to cast 25% of the eligible vote of the Association shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. In establishing the total number of eligible votes for a quorum, if a Unit is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, or if the voting rights for a Unit have been suspended, that Unit shall not be counted as an eligible vote.

**F. Adjourned and Reconvened Meetings.**

Any membership meeting may be adjourned, to be reconvened at a later date or time, by vote of the Owners holding a majority of the vote represented at such meeting, regardless of whether a quorum is present. Any business that could have been transacted properly at the original session of the meeting may be transacted at the reconvened session. No additional notice of such reconvened session shall be required if the original session is adjourned for a period not exceeding 10 days.

**G. Proxies.**

Any Owner entitled to vote may do so by written proxy. To be valid, a proxy must be signed, dated, and presented to the Board of Directors at or before registration at the membership meeting for which it is to be used. The Board may accept proxies by whatever means it deems acceptable. A proxy is revoked only if: (1) the Owner giving the proxy attends the meeting in person and requests the proxy back during registration for the meeting (attendance alone does not invalidate the proxy); (2) the Owner giving the proxy signs and delivers to the Board a written statement revoking the proxy or substituting another person as proxy; or (3) before the proxy is exercised, the Board receives notice of the death or incapacity of the Owner giving the proxy. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

**H. Action Taken Without A Meeting.**

In the Board's discretion, any action that may be taken by the Owners at any annual or special membership meeting may be taken without a meeting by written ballot or written consent as provided below.

**(1) Written Ballot.**

A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the vote cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the vote of approval equals or exceeds that which would be required to approve the matter at a meeting at which the total vote cast was the same as the vote cast by ballot.

All solicitations for votes by written ballot shall: (a) indicate the number of responses needed to meet the quorum requirements; (b) state the percentage of approvals necessary to approve each matter, other than election of Directors; and (c) specify the time by which such ballot must be received by the Board of Directors in order to be counted. A ballot may not be revoked. The Association shall maintain such ballots in its file for at least three years.

Except for amendments to recorded Association Legal Instruments that become effective upon recording, and except for actions that specifically set a later effective date, approval of any action taken by written ballot shall be effective upon the receipt of the affirmative vote necessary to take such action.

**(2) Written Consent.**

Approval by written consent shall be valid only when the affirmative written consents received equals or exceeds the vote that would be required to approve the matter at a meeting. Consents shall be filed with the minutes of the membership meetings. Except for amendments to recorded Association Legal Instruments that become effective upon recording, and except for actions that specifically set a later effective date, approval of any action taken by written consent shall be effective 10 days after sending the notice of approval described below.

**(3) Notice to Members of Approval.**

If an action of the Association membership is approved by written ballot or written consent, the Board of Directors shall issue notice of such approval to all Owners.

**I. Order and Conduct of Business.**

The President shall establish the agenda for, and preside at, and the Secretary shall keep the minutes of, all membership meetings. The Board of Directors may establish rules of conduct and the order of business for all membership meetings. When not in conflict with the Declaration, these Bylaws, the Articles of Incorporation or meeting procedures adopted by the Board of Directors, Robert's Rules of Order (latest edition) shall govern all membership meetings. The Board may order the removal of anyone attending a membership meeting who, in the opinion of the Board, disrupts the conduct of business at such meeting.

### **3. BOARD OF DIRECTORS**

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#### **A. Composition and Selection.**

##### **(1) Number and Eligibility.**

A Board of Directors composed of 5 persons shall govern the affairs of the Association. The Directors shall be Owners. No Owner and his or her spouse, Domestic Partner, or co-Owner may serve on the Board at the same time. If, at the time of an election, a Unit is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, or the voting rights for a Unit have been suspended, no person representing such Unit shall be eligible for election to the Board.

##### **(2) Term of Office.**

Those Directors serving on the Effective Date of these Bylaws shall remain in office until the terms for which they were elected expire. Successor Directors shall be elected as provided herein. Those persons receiving the most votes shall be elected to the number of positions to be filled. At the expiration of the term of office of each member of the Board of Directors a successor shall be elected to serve for a term of 2 years, commencing on the date of the election and expiring at the second annual membership meeting after such election. A member of the Board of Directors shall hold office until his or her respective successor is elected, he or she is removed, or he or she resigns. At the expiration of a Director's term of office, if a successor cannot be elected for any reason, the existing Director shall continue to hold office and begin serving another term until his or her successor is elected to fill the remainder of such new term, or he or she resigns.

##### **(3) Removal of Directors.**

###### **(a) Removal by the Owners.**

At any duly called membership meeting, for which the notice given called for a vote to remove any Director(s), such Director(s) may be removed with or without cause by Owners holding a majority of the total Association vote. A successor may then and there be elected to fill the vacancy created. Any Director whose removal has been proposed by the Association membership shall be given an opportunity to be heard at the meeting. To ensure a Director has a chance to present a statement to the membership, the Owners' vote to remove a Director cannot be accomplished by written ballot or written consent. For the purpose of this Paragraph, no Owner may vote more than his or her own vote and the vote of four (4) proxies. However, a Director may vote any number of proxies.

###### **(b) Removal by the Board of Directors.**

Any Director may be removed by the vote of the other Association Directors if: (1) he or she is absent from 3 or more meetings of the Board of Directors in any fiscal year; (2) his or her Unit is shown on the Association's books and records to be more than 30 days past due in any assessment or charge; (3) the voting rights for his or her Unit have been suspended; (4) he or she was appointed by the other Directors to fill a vacancy; or (5) he or she files any legal action, counterclaim or administrative action against the Association, any Director or Officer, in his or her capacity as such, or the Association's managing agent.

##### **(4) Vacancies.**

Vacancies in the Board of Directors caused by any reason, except the removal of a Director by vote of the Association membership, shall be filled by a vote of the remaining Directors. Unless earlier removed, the successor so selected shall hold office for the remainder of the term of the Director position being filled.

**(5) Compensation.**

Directors shall not be compensated for services performed within the scope of their duties as Association Directors unless authorized by a vote of the Association membership. However, Association Directors may be compensated for performing maintenance or other services as set forth in Paragraph 3A(6) below. Compensation, as may be authorized herein, can include payment but shall not include a waiver of assessments or other Association charges. Directors also may be reimbursed for the expenses incurred in carrying out their duties as Association Directors upon the approval of such expenses by the Board of Directors. The Association may give the Directors nominal gifts or tokens of appreciation for recognition of services performed by them. For purposes hereof, reasonable food and beverages purchased for meetings of the Board shall not be considered compensation.

**(6) 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 of Directors and the non-interested voting Directors approve such contract. The interested Director shall not count for purposes of establishing a quorum of the Board and, if present at a meeting (if any), must leave the room during the discussion on such matter.

**(7) Nomination.**

Nomination for election to the Board of Directors shall be made from the floor at the meeting, or, if elections are conducted by mail-in ballot or electronically in lieu of a meeting, by the method and date prescribed by the Board. The Board also may appoint a nominating committee to make nominations prior to the meeting. Each nominee shall be given a reasonable opportunity to communicate his or her qualifications to the membership prior to the election.

**(8) Elections.**

Directors shall be elected at the annual membership meeting or by mail-in or electronic ballot in lieu of such meeting. If elections are held at the annual membership meeting, voting shall be by written ballot, unless dispensed with by unanimous consent or unless a slate of candidates is unopposed and is accepted by acclamation. The nominees receiving the most votes shall fill the directorships for which elections are held. There shall be no cumulative voting.

**B. Meetings.**

**(1) Regular Meetings.**

Regular meetings of the Board of Directors shall be held at least every three months, at such time and place as determined by the Board.

**(2) Special Meetings.**

The President is authorized to call a special Board of Directors meeting. In addition, the President is required to call a special Board meeting at the request of at least a majority of the Directors.

**(3) Notice of Meetings.**

Except as provided in this Paragraph, the President or Secretary shall give each Director at least two-days notice of any Board of Directors meeting. A newly elected Board may meet immediately following their election without notice. Regularly scheduled Board meetings may be held without notice, provided the schedule for such meetings is announced to the Directors.

**(4) Waiver of Notice.**

Waiver of notice of a Board of Directors meeting shall be deemed the equivalent of proper notice. Any Director may, in writing, waive notice of any Board meeting, either before or after such meeting. A Director's attendance at a Board meeting shall be deemed waiver by such Director of improper notice, unless such Director objects to improper notice at the time the meeting is called to order. If all Directors are present at any Board meeting, no notice shall be required, and any business may be transacted at such meeting.

**(5) Quorum and Voting.**

The presence of Directors entitled to cast one-half of the eligible votes of the Board of Directors shall constitute a quorum for the transaction of business. One or more Directors who participate in a Board meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, if all persons participating in such meeting can hear each other. Directors may not participate in Board meetings by proxy.

Unless otherwise provided herein, all decisions of the Board of Directors shall be by majority vote. No Director shall participate in any vote of the Board if, at the time of the vote, his or her Unit is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, or the voting rights for such Unit have been suspended.

**(6) Conduct of Meetings.**

The President shall establish the agenda for, and preside at, and the Secretary shall keep the minutes of, all Board of Directors meetings. The President may establish rules of conduct and the order of business for all Board meetings.

If the Board of Directors allows Owners to attend Board meetings, then except as expressly authorized by the Board, only Directors may participate in discussions or deliberations at the Board meeting. Notwithstanding the above, the Directors may adjourn any Board meeting and reconvene in executive session, with only the Directors and other people authorized by the Board present. In executive session, the Board may discuss and vote upon personnel matters, litigation in which the Association is or may become involved, delinquent accounts, violations of the Declaration, Bylaws and/or Association rules, 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 of Directors may order the removal of any meeting guest who, in opinion of a majority of the Directors present at the meeting, either disrupts the conduct of business at the Board meeting or fails to leave such meeting upon request after an announcement that the Board will reconvene in executive session.

**(7) Action Without a Meeting.**

The Board of Directors can take action outside of a properly called meeting if a majority of the eligible Directors consent in writing to such action. Such signed, written consents must describe the action taken outside a meeting and be filed with the minutes of the Board meetings.

**C. Authority.**

**(1) Powers and Duties.**

The Board of Directors shall manage the affairs of the Association and have every right, power and privilege authorized or implied herein and under Georgia law to effectuate such responsibilities. Unless otherwise required by the Declaration, the Act or the Georgia Nonprofit Corporation Code, the Board may perform all of its responsibilities without a vote of the Association

membership. The Board may delegate any and all of its functions, in whole or in part, to any other entity. In addition to the duties imposed by these Bylaws, the Board shall have the power to do the following (by way of explanation and not limitation):

(a) control, manage, operate, maintain, repair, replace, and improve all portions of the Common Elements as defined in the Declaration;

(b) grant and accept permits, licenses, utility easements, leases, and other easements;

(c) acquire, hold and dispose of tangible and intangible personal property and real property;

(d) make, delete and amend reasonable rules and regulations governing the use of the Condominium;

(e) enforce by legal means the provisions of the Declaration, these Bylaws and the rules and regulations as provided in the Declaration and the Act;

(f) bring or defend any actions or proceedings which may be instituted on behalf of or against the Owners concerning the Association or the Common Elements;

(g) prepare and adopt an annual budget and establish the contribution from each Owner to the Common Expenses;

(h) establish the means and methods of collecting assessments as provided in the Declaration;

(i) deposit Association funds in a financial depository or institution that the Board of Directors shall approve, or otherwise invest the proceeds in accordance with any limitations set forth in O.C.G.A. Section 14-3-302, and use such funds to administer the Association;

(j) designate the signatories of all Association bank and other financial accounts;

(k) obtain and carry insurance against casualties and liabilities as provided in the Declaration and pay the premium cost thereof;

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

(m) designate, hire, dismiss and contract with the personnel necessary to operate the Association and the personnel necessary to maintain, repair, replace and improve the Common Elements and, where appropriate, compensate such personnel; and

(n) purchase equipment, supplies and material to be used by Association personnel in the performance of their duties.

**(2) Management Agent.**

The Association may, but shall not be required to, hire a professional management agent or agents, to be compensated as established by the Board of Directors, and to perform such duties and services as the Board shall authorize. The Board shall use reasonable efforts to provide for termination of any such management contract with or without cause and without penalty, upon no more than thirty days written notice, and for a term not in excess of one year.

**(3) Borrowing.**

The Board of Directors, on behalf of the Association, shall have the power to borrow money to maintain, repair, restore or replace the Common Elements without the approval of the Association membership. The Board, on behalf of the Association, also shall have the power to borrow money for other purposes with the approval of Owners holding at least a majority of the vote cast at a duly called membership meeting, or by ballot or written consent.

**(4) Committees.**

**(a) Nominating Committee.**

The Board of Directors may appoint a nominating committee to nominate candidates for election to the Board.

**(b) Architectural Control Committee.**

The Board of Directors may establish an Architectural Control Committee to administer the architectural controls as provided in the Declaration.

**(c) Other Committees.**

The Board may establish such other committees as it shall determine, with the powers and duties that the Board of Directors shall authorize.

**(d) Service on Committees.**

Unless otherwise provided by the Board of Directors, the Board of Directors in its discretion may appoint and remove the members and chairpersons of each committee.

**D. Liability and Indemnification.**

The Association shall indemnify every Director, officer and committee member against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon such Director, officer 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 a Director, officer, or committee member, whether or not such person is a Director, officer or committee member at the time such expenses are incurred subject to the limitations below.

The Directors, officers, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such Director, officer, or committee member in the performance of his or her duties, except for his or her own individual willful misfeasance or malfeasance. The Directors and officers 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 Directors or officers may also be members of the Association), and the Association shall indemnify and forever hold each such Director and officer free and clear 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 Director, officer, or committee member, or former Director, officer, or committee member, may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and, if obtainable, directors' and officers' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.



#### 4. OFFICERS

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##### A. Designation and Qualification.

The principal officers of the Association shall be the President, Vice President, Secretary, and Treasurer. The President, Vice President and Secretary must be Directors, but the Treasurer need not be a Director. Except for the offices of Secretary and Treasurer, which may be held by the same person, no person may hold more than one office simultaneously.

##### B. Election and Terms of Offices.

The Board of Directors shall elect the Association officers annually at the first Board meeting following each annual membership meeting. The Association officers shall serve until a successor is elected, the Board of Directors removes the officer, or the officer resigns.

##### C. Removal of Officers.

The Board of Directors may remove any officer with or without cause.

##### D. Vacancies.

The Board of Directors may fill any vacancy in any office arising because of death, resignation, removal, or otherwise. Unless earlier removed, the successor so selected shall hold office for the remainder of the term of the officer position being filled.

##### E. President.

The President shall be the chief executive officer of the Association and shall establish the agenda for and preside at all meetings of the membership and the Board of Directors. The President shall have all the general powers and duties that are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code.

##### F. Vice President.

The Vice President shall act in the President's absence and shall have the same powers, duties, and responsibilities as the President when so acting.

##### G. Secretary.

The Secretary shall keep the minutes of all meetings of the membership and the Board of Directors. The Secretary also shall keep all Association books and records and perform all duties incident to the office of the secretary of a corporation organized under the Georgia Nonprofit Corporation Code.

##### H. Treasurer.

The Treasurer shall have the responsibility for the Association's funds and securities. The Treasurer shall keep full and accurate financial records and books of account showing all receipts and disbursements of the Association, prepare all required financial statements and tax returns, deposit all Association funds in such depositories as may be designated by the Board of Directors, and prepare the budget as provided in the Declaration. The Treasurer may delegate all or a part of the above responsibilities to a management agent.

**I. Other Officers.**

The Board of Directors may appoint one or more assistant treasurers, assistant secretaries, or other officers or subordinate officers with such titles and duties as defined by the Board. Any assistant, subordinate or other officers shall not be required to be Directors.

**J. Agreements, Contracts, Deeds, Leases, Etc.**

At least two officers of the Association (or such other person(s) as may be designated by resolution of the Board of Directors) shall execute all agreements, contracts, deeds, leases, checks, promissory notes, and other instruments of the Association.

**K. Standard of Conduct**

Officers shall discharge their duties and their conduct shall be evaluated in accordance with the business judgment rule described in O.C.G.A. Section 14-3-842.

**5. MISCELLANEOUS**

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**A. Notices.**

**(1) Method of Giving Notices.**

Unless otherwise prohibited by these Bylaws or the Declaration, all notices and other communications required by these Bylaws or the Declaration shall be in writing and shall be given by:

(a) Personal delivery;

(b) United States mail, first class, postage prepaid;

(c) Statutory overnight delivery;

(d) Electronic mail;

(e) Facsimile; or

(f) A secure web site, provided that notice shall be deemed given via web site only upon proof that the addressee has retrieved the message.

**(2) Address For Notices.**

Notices given by one of the methods described above shall be given:

(a) If to a Unit Owner, to the address, electronic mail address or facsimile number that the 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, to the address, electronic mail address or facsimile number that the Occupant has designated in writing with the Secretary or, if no such address has been designated, at the address of the Unit occupied; or

(c) If to the Association, the Board of Directors or the managing agent, to the postal address, facsimile or electronic mail address of 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. The Secretary shall promptly provide notice to all Owners of any such change in address.

**B. Fiscal Year.**

The fiscal year of the Association shall be the calendar year unless otherwise set by resolution of the Board of Directors.

**C. Financial Statements.**

Financial statements shall be prepared annually in the manner provided by the Board of Directors. Financial statements must be made available to Owners and to the holder, insurer or guarantor of any first mortgage on a Unit within 120 days of the end of the Association's fiscal year.

**D. Financial Review.**

A financial review of the Association's accounts shall be performed annually in the manner provided by the Board of Directors. The Board shall give a financial report to the Owners at the annual membership meeting. Thereafter, a majority of the total Association membership may require that an independent accountant audit the Association's accounts, as a Common Expense. The audit, if applicable, shall be made available to the holder, insurer, or guarantor of any first mortgage on a Unit upon submission of a written request therefor.

**E. Amendment.**

(1) **Member Approval Procedure.** Except where a higher vote is required for action under any other provisions of the Declaration, these Bylaws or by the Act, these Bylaws may be amended with the approval of Owners holding 51% of the total Association vote. 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 Forsyth, Georgia land records.

(2) **Default Approval Procedure After Owner Non-response.** It is recognized that, when Owners fail to participate in an amendment vote because of apathy or other reasons which are not based on any disagreement with a proposed amendment, important amendments to the Declaration or Bylaws may have no chance of approval, with the supermajority voting requirements established under the Act. It also is recognized that supermajority voting requirements are important for Owner actions which are as significant as amending the Declaration or these Bylaws. To balance these competing concerns, this subparagraph establishes a mechanism which provides every eligible Owner an opportunity to issue a vote of approval, disapproval or abstention on proposed amendments to the Declaration or Bylaws, but also a realistic mechanism for approving important amendments, without the damaging consequences of Owner non-response.

The Board shall issue notice of all proposed amendments to each Owner. With each such notice, the Board shall include a copy of the proposed amendment, along with a consent form or ballot, which complies with the requirements of these Bylaws. Each such consent form or ballot shall give Owners an opportunity to vote for, vote against or abstain from voting on the proposed amendment.

If the amendment is not approved or defeated by sufficient vote within 60 days of the amendment notice described above, then the Board may seek to obtain default approval from Owners under this subparagraph. In such case, the Board shall send default approval notice, by certified mail, to all Owners who have not returned consents or ballots on a proposed amendment within that 60-day period. This default approval notice also shall include a consent form or ballot, as provided above, along with a statement that the Owner's failure to return an executed consent form or ballot, marked with a vote for, a vote against, or an abstention from voting on the amendment, within 30 days of the date of such default approval notice, will be deemed consent to such amendment. If the Board does not receive such consent or ballot within that 30-day period, the Owner shall be deemed to have consented to and approved the amendment.

(3) **Eligible Mortgage Holder Approval.** In addition to approval by the Owners as provided above, material amendments to the Declaration and these Bylaws must be approved by Eligible Mortgage Holders who represent at least 51% of the votes of 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 30 days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

(4) **Amendments to Comply with Law or Conform Documents.** Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend the Declaration and these Bylaws to comply with any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA"), or to resolve conflicts between the Declaration, these Bylaws, the Articles, and applicable laws.

(5) **Validity of Amendments.** No Person shall be permitted to bring any legal action to challenge the validity of an amendment to the Declaration or these Bylaws more than one year after the recording thereof in the Forsyth, Georgia land records.

**F. Books and Records.**

To the extent provided in O.C.G.A. Section 14-3-1602, and upon written request received at least five business days before the date requested for an inspection, all Association Owners and any Eligible Mortgage Holder shall be entitled to inspect the Association's books and records at a reasonable time and location specified by the Association. The Association can limit the length of time of each inspection, but such time limit shall not be less than two hours per inspection. The Association may impose a reasonable charge, covering the cost of labor, materials and copies of any documents, including but not limited to the customary copy charge and hourly fee of the Association's agent supervising such inspection. To prevent abuse of an Owner's inspection rights, records previously inspected by an Owner are not subject to inspection again by the same Owner more than once per year.

Notwithstanding anything to the contrary, the Board may limit or preclude the inspection of confidential or privileged documents, including but not limited to, attorney/client privileged communication, executive session meeting minutes, and financial records or accounts of other Owners. Minutes of all meetings of the membership and the Board become official Association records when approved by the membership or the Board, as applicable.

**G. Conflicts.**

The duties and powers of the Association shall be those set forth in the Act, the Georgia Nonprofit Corporation Code, the Declaration, the Articles of Incorporation, and these Bylaws, together with those reasonably implied to affect the purposes of the Association. If there is a conflict or inconsistency between the Act, the Georgia Nonprofit Corporation Code, the Declaration, the Articles of Incorporation or these Bylaws, such laws and documents, in that order, shall prevail.

**H. No Discrimination.**

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

**I. Captions.**

The captions herein are inserted only as a matter of convenience and for reference. They in no way define, limit, or describe the scope or intent of these Bylaws.

**J. Gender and Grammar.**

The use of the masculine or feminine gender in these Bylaws shall be deemed to include the opposite gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

**K. 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.

**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Habersham Pointe Condominium Association, Inc., a Georgia corporation;

That the foregoing Bylaws constitute the Amended and Restated Bylaws of said Association, as duly adopted by the Board of Directors and the members of the Association on the 10<sup>th</sup> day of JULY, 2009.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 10 day of JULY, 2009.

HABERSHAM POINTE CONDOMINIUM ASSOCIATION,  
INC.

*Amirah J. Black* (Seal)  
Secretary

[CORPORATE SEAL]

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Exhibit "B"	Undivided Percentage Interest in the Common Elements and Liabilities for Common Expenses
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