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STATE OF GEORGIA
COUNTY OF DEKALB

Reference: Deed Book 5064
Page 132

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
FOR
THE CONDOMINIUM OF AVONDALE ESTATES**

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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WHEREAS, on September 17, 1984, Ridgeway Development Corporation, a Georgia corporation (“Declarant”) recorded that certain Declaration of Condominium for Avondale Estates Condominium (“Declaration”), was recorded in Deed Book 5064, Page 132 et seq., DeKalb County, Georgia, land records; and

WHEREAS, on September 17, 2009, that certain Amendment to the Declaration was recorded in Deed Book 21651, Page 562, et. seq., DeKalb County, Georgia, land records; and

WHEREAS, on November 2, 2011, that certain Second Amendment to the Declaration was recorded in Deed Book 22706, Page 681, et. seq., DeKalb County, Georgia, land records; and

WHEREAS, prior to the Second Amendment, twenty-seven (27) Supplemental Declarations were recorded in the DeKalb County, Georgia, land records by the Declarant between September, 1984, and September, 1988; and

WHEREAS, a plats related to the Condominium are recorded in the following Plat Book and Page Numbers in the DeKalb County, Georgia, land records:

Condominium Plat	Book 5,	Pages 96-98
	Book 5,	Pages 127-129
	Book 5,	Pages 143-144
	Book 6,	Pages 28-29
	Book 6,	Pages 86-87
	Book 6,	Pages 94-95
	Book 6,	Pages 111-112
	Book 6,	Pages 118-119; as revised and recorded in
	Book 6,	Pages 134-135

WHEREAS, floor plans related to the Condominium were recorded in Condominium Floor Plans File No. 167, DeKalb County, Georgia, land records; and

WHEREAS, Paragraph 12 of the Declaration provides that all amendments to the Declaration, except as specified otherwise, may be made by the affirmative vote, written consent, or any combination thereof, of the members of the Association holding at least two-thirds (2/3) of the total votes thereof; and

WHEREAS, the Declarant no longer has the right to appoint the directors and officers of the Association, and as such the Declarant’s consent is not required; and

WHEREAS, the Bylaws of Avondale Estates Condominium Association, Inc. (“Bylaws”) were attached as Exhibit “D” to the Declaration and recorded in Deed Book 6054, Page 160, et. seq. of the DeKalb County, Georgia, land records, and

WHEREAS, the Bylaws were amended in that First Amendment to the Bylaws on February 17, 2010, in Deed Book 21859, Page 729, and in that Second Amendment to the Bylaws on November 2, 2011, in Deed 22706, Page 683 of the DeKalb County, Georgia, land records; and

WHEREAS, Article VIII, Section 9 of the Bylaws provides that the Bylaws may be amended by the affirmative vote, written consent, or any combination thereof of members holding no less than two-thirds (2/3) of the total Association vote; and

WHEREAS, the members of the Association holding at least two-thirds (2/3) of the total Association vote desire to amend the Declaration and Bylaws and have approved the following amendment to the Declaration and Bylaws; and

NOW THEREFORE, the Declaration of Condominium and Bylaws for Avondale Estates Condominium and all exhibits thereto are hereby stricken in their entirety and the following is simultaneously substituted therefor:

**AMENDED AND RESTATED DECLARATION OF CONDOMINIUM
FOR
THE CONDOMINIUM OF AVONDALE ESTATES**

November 1, 2019

THIS DECLARATION MAY BE USED ONLY IN CONNECTION WITH THE OWNERSHIP AND SALE OF PROPERTY AT THE CONDOMINIUM OF AVONDALE ESTATES AND THE OPERATION OF THE CONDOMINIUM OF AVONDALE ESTATES.

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1. **NAME.**

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

2. **DEFINITIONS.**

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

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

(b) **Architectural Control Committee** or **ACC** means the committee established to exercise the architectural review powers set forth in Paragraph 12 hereof, which shall be the Board of Directors of the Association unless by resolution the Board appoints a separate Architectural Control Committee.

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

(d) **Articles** or **Articles of Incorporation** means the Articles of Incorporation of Avondale Estates Condominium Association, Inc., filed with the Secretary of State of the State of Georgia.

(e) **Association** means The Condominium of Avondale Estates a/k/a Avondale Estates Condominium Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

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

(g) **Bylaws** mean the Bylaws of Avondale Estates Condominium Association, Inc., attached to this Declaration as Exhibit "C" and incorporated herein by this reference.

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

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

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

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

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

(m) **Domestic Partner** means any adult who cohabitates with an Owner and who has been designated as the Owner's Domestic Partner in a written statement, signed by the Owner and filed with the

Association's Secretary. A person shall no longer be a Domestic Partner upon the Secretary's receipt of a written termination notice, signed by either the Owner or the Domestic Partner.

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

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

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

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

(r) **Floor Plans** means the floor plans for Avondale Estates Condominium, filed in the Condominium File Cabinet of the DeKalb County, Georgia records.

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

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

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

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

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

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

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

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

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

(bb) **Survey** means the plat of survey for Avondale Estates Condominium, filed in the Condominium Plat Book of the DeKalb County, Georgia records.

(cc) **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.

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

The Condominium subject to this Declaration and the Act is located in Land Lot 217 of the 15th District of DeKalb County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. The Survey and Floor Plans relating to the Condominium have been filed in Plat Books 5 and 6 which pages are also described in Exhibit "A" to this Declaration and specifically incorporated by reference herein as are the Floor Plans filed in Condominium Floor Plan File Number 167, DeKalb County, Georgia records. The Survey and Floor Plans are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

4. **UNITS AND BOUNDARIES.**

The Property described and submitted to the Act is divided into 204 separate units, the limited common elements and the common elements. Each unit consists of a dwelling and its appurtenant percentage of undivided interest in the common elements as herein provided. 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 Plat of Survey and the Plans. Each unit includes that part of the structure which lies within the following boundaries:

(a) **Horizontal (Upper and Lower):**

(i) The upper horizontal boundary of each unit located on the Property is the plane formed by the uppermost, unexposed surface of the wallboard or other material comprising a part of the ceiling enclosing the uppermost story of the unit.

(ii) The lower horizontal boundary of each unit located on the Property is the plane formed by the finished surface of the concrete slab or subflooring on which the lowermost story of the unit is constructed.

(b) **Vertical (Perimetric or Lateral):** The vertical boundaries of each unit located on the Property are the planes formed by the unexposed surface of the wallboard or other surface comprising the interior walls enclosing a unit.

Additional Information to Interpret Unit Boundaries.

Notwithstanding the description of the boundaries set forth above, the boundaries shall be deemed to be extended to include within the unit the following: all portions of the plumbing, heating, electrical, and air conditioning systems (including furnaces, compressors, components, pipes, wires, conduits, ducts, and the like) serving only that individual unit; all windows, glass surfaces, and doors (including window and door frames) serving the unit; and all portions of any covered deck, patio, or balcony serving the unit, whether or not such deck, patio or balcony is enclosed.

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 variance 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.**

The common elements and facilities include all parts of the Property not located within the boundaries of a unit. The Common Elements may include, but are not limited to, the following: certain

utilities, fences, entry features, paving, walls, retaining walls, landscape areas, outside parking area, the foundation, roof, and exterior walls of the buildings, swimming pool, tennis courts and limited access entry system.

6. LIMITED COMMON ELEMENTS – ASSIGNMENT AND REASSIGNMENT.

(a) The limited common elements located on the Property and the units to which they are assigned are:

(i) the mailbox is assigned as a limited common element to the unit it serves;

(ii) to the extent that a deck, patio or balcony serving a unit is not part of the unit, the deck, patio or balcony which is appurtenant to each unit is assigned as a limited common element to the unit having direct access to such deck, patio or balcony;

(iii) the doorsteps or stoops leading as access to a deck, patio or balcony are assigned as limited common element to the unit it serves;

(iv) 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 limited common element to the unit or units so served;

(v) any gas or electric meter which serves only one unit is assigned as limited common element to the unit so served; and

(vi) landings and stairways serving more than one and fewer than all of the units are assigned as limited common elements to the units served jointly.

(vii) any parking space assigned in order to accommodate a documented disability or handicap of a Unit Owner upon request and after approval of the Board upon submission by the Owner of a proper handicap permit, license plate tag and/or registration for use of marked Handicap Parking Space.

(b) The Association's Board, without need for a membership vote, is hereby authorized to assign and to reassign Limited Common Elements, 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 Unit 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 the 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 ALLOCATION OF VOTES.

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

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

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

(a) **General Allocations.** Except as provided below or elsewhere in the Act or Condominium Instruments, the amount of all Common Expenses shall be assessed against all the Units in accordance with the percentage of undivided interest in the Common Elements equal to that of every other Unit and shall be assessed in accordance with the allocation for common expenses. For the purposes of allocating costs in accordance with this Section, an enclosed deck, patio or balcony shall not be an exposed interior portion of a Unit. Accordingly, all costs of painting, staining and otherwise maintaining an enclosed deck, patio or balcony shall be the responsibility of the Owner of the Unit which is served by such deck, patio or balcony.

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

(i) Any Common Expenses benefiting less than all of the Units, or benefiting some Units more than others, may be specifically specially assessed equitably among all of the Units that are benefited according to the benefit received. 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.

(ii) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units or by the Occupant(s), licensees or invitees of any such Unit 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.

(c) **Common Water Meters.** The Condominium currently is served by a common water meter or meters. The Board shall have the authority to assess as a specific special assessment, as provided in subparagraph (b)(ii) above, individual Unit utility usage charges, based on either a "residential utility billing" system or sub-metering.

(i) If the Board chooses to install submeters for each Unit (which decision shall be in the sole discretion of the Board), the costs of doing so may be charged back to the Units as specific special assessments. Thereafter, the Board shall have the authority to assess individual Unit utility usage charges as specific special assessments based on readings of the submeters. In the alternative, the Board has the right to specifically specially assess the Units based upon reasonable estimates of utility usage charges with adjustments after periodic submeter readings. The Board also shall have the right to add a charge for the overhead for such sub-metering and meter reading. The Board further would have the right for reasonable entry, arranged with the Unit owner as practical, for the installation of the submeter on the owner's property or limited common property pertaining to that Unit.

(ii) If the Board chooses to impose a "residential utility billing" system Unit (which decision shall be in the sole discretion of the Board), the Board shall have the right to add a charge for the cost of overhead for such services. "Residential Utility Billing" systems base utility charges upon a Unit's square footage as a percentage of the total square footage of all Units in the Condominium together with a factor based on the number of Occupants for each Unit.

9. **ASSOCIATION RIGHTS, RESTRICTIONS & EASEMENTS.**

In addition to and not in limitation of all other rights it may have, including those identified in Paragraph 19, the Association, acting through its Board of Directors, shall have the rights and authorities outlined below:

- (a) the right of the Association to charge reasonable admission and other fees for the use of any portion of the Common Elements, to limit the number of guests of Unit Owners and tenants who may use the Common Elements, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his or her family, tenants, guests, and invitees;
- (b) the right of the Association to suspend the voting rights of an Owner and the right of an Owner to use the Common Elements for any period during which any assessment or charge against his or her Unit which is provided for herein remains unpaid, or for a reasonable period of time for an infraction of the Declaration, Bylaws, or rules and regulations;
- (c) the right of the Association to borrow money as may be set forth in the Bylaws.;
- (d) the right of the Association to grant permits, licenses or easements across the Common Elements, as authorized in this Declaration or the Bylaws;
- (e) the right of the Association to dedicate or transfer all or any portion of the Common Elements subject to such conditions as may be agreed to by the members of the Association;
- (f) the right of the Association to make and to enforce reasonable rules and regulations governing the use of the Condominium, including the Units, Limited Common Elements and Common Elements;
- (g) the right of the Association to enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by imposition of reasonable monetary fines and suspension of use and voting privileges as provided in Section 44-3-76 of the Act;
- (h) the right of the Association to control, manage, operate, maintain, improve and replace all portions of the Area of Common Responsibility;
- (i) the right of the Association to deal with insurance carriers, government entities and/or other third parties and vendors on behalf of the Condominium in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of the Act and this Declaration;
- (j) the right of the Association to acquire, hold and dispose of tangible and intangible personal and real property;
- (k) the right of the Association to close permanently or temporarily any portion of the Common Elements (excluding the Limited Common Elements) with thirty (30) days prior notice to all Owners, except that, in emergency situations requiring a temporary closing, prior notice shall not be required so long as notice is given within three (3) days after the closing explaining the reason for the closing. However, the Owners may re-open closed Common Elements by a majority vote of the total Association votes cast at a duly called special or annual meeting;
- (l) the right of the Association to establish and charge a construction deposit and/or impact fee in a reasonable amount determined by the Board of Directors to be paid by all Owners making modifications, alterations or additions to their Units in order to protect the Condominium against damage due to the transportation and use of construction materials in the Condominium. Costs of repair of such damage may be deductible from the construction deposit and any additional expenses may be specifically assessed against the Unit per the specific special assessment provisions of this Declaration.
- (m) the right of the Association to establish and charge administrative fees associated with the management of leases, contracts, foreclosures and/or other services provided by the Association to Unit Owners which fees may be charged by third-party services providers to the Association as well.

10. **ASSESSMENTS.**

- (a) **Purpose of Assessment.** The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein shall be used for the general

purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Units in the Condominium as may be more specifically authorized from time to time by the Board.

(b) Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; and (ii) special assessments; (iii) specific special assessments, (iv) capital contribution/transfer fees, and (v) foreclosure administration fees, against any particular Unit which are established pursuant to the terms of this Declaration, including but not limited to reasonable fines imposed in accordance with the terms of this Declaration.

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

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

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

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

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

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

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

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

(ii) If assessments, fines or other charges, or any part thereof, remain unpaid more than sixty (60) days after the assessment payments first become delinquent, the Owner's and Occupant's rights to vote and use the Common Property shall be automatically suspended until all amounts owed are paid in full (provided, however, the Board may not deny ingress or egress to or from a Unit) and the Association, acting through the Board of Directors, may suspend Common Element parking privileges to a Unit and/or institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law, including reasonable attorney's fees actually incurred. Enforcement under this subparagraph is not dependent upon or related to other restrictions and/or other actions.

(iii) Notwithstanding the above, the Board may suspend any utility or service paid for as a Common Expense but only after a final judgment or judgments in excess of a total of \$750.00, or such other

amount as required by the Act, are obtained in favor of the Association from a court of competent jurisdiction, the Association provides the notice required to be provided by the institutional provider of such service prior to suspension of such service, and 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.

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

(d) **Computation of Operating Budget and Assessment.** Prior to the beginning of each fiscal year, the Board shall prepare a budget covering the estimated costs of operating the Condominium during the coming year, and the Board shall establish the annual assessment or installments for the coming year. The Board shall cause the budget and notice of the assessment(s) to be delivered to each member at least thirty (30) days prior to the due date for such assessment, or the first installment thereof. The budget and the assessment shall become effective unless disapproved at a duly called Association annual meeting by a vote of a majority of the total Association membership; provided, however, if a quorum is not obtained at the annual meeting, the budget shall become effective even though a vote to disapprove the budget could not be called at this meeting.

Notwithstanding the foregoing, in the event that the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. The Board may propose a new budget at any time during the year at a special meeting of the Association. The proposed budget and assessment shall be delivered to the members at least thirty (30) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to budgets considered at special meetings.

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

(e) **Special Assessments.** In addition to the annual assessment provided for in subparagraph (b) above, the Board may, at any time, and in addition to any other rights it may have, levy a special assessment against all Owners, notice of which shall be sent to all Owners. In order to be effective, any special assessment (except as provided herein regarding the power to impose specific special assessments and regarding repair or reconstruction of casualty damage to or destruction of all or part of the Condominium) shall be implemented in a manner consistent with O.C.G.A. § 44-3-80, as applicable.

(f) **Capital Reserve Budget and Contribution.** The Board of Directors shall be obligated to annually prepare a capital reserve budget that shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall be obligated to set the required capital reserve contribution capital needs of the Association, as shown on the capital reserve budget, with respect both to amount and timing by equal annual assessments over the period of the budget, but which amount shall not be less than ten (10%) percent, or such other amount as required by the Department of Housing and Urban Development (HUD) for Fair Housing Act (FHA) Project Approval. The annual capital reserve contribution required shall be fixed by the Board and included within the budget and assessment as provided herein. A copy of the capital reserve budget shall be distributed to each member in the same manner as the operating budget.

(g) **Statement of Account.** Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late

charges, interest, fines, or other charges against such Unit. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding Ten and No/100 Dollars (\$10.00), or such higher amount as may be authorized by the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Unit as of the date specified therein, if such statement is reasonably relied upon in connection with the conveyance of any Unit or the issuance of any Mortgage on a Unit.

(h) Surplus Funds and Common Profits. Pursuant to the Act, common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, be: (i) distributed to the Owners; (ii) credited to the next assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Unit; or (iii) added to the Association's capital reserve account as set forth above.

(i) 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 DeKalb 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 the Georgia Condominium 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 of such Unit, or by deed in lieu of foreclosure, will be required to pay the Association a Foreclosure Administration Fee in the amount of \$2,000.00 at the time that the foreclosure deed or deed in lieu of foreclosure is recorded in the DeKalb County, Georgia, land records. The Foreclosure Administration Fee shall constitute a specific assessment as described in this Declaration.

(j) Transfer Fee/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, and regardless of whether or not consideration was paid for same, 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 two (2) months of the annual assessment 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.

11. MAINTENANCE RESPONSIBILITY.

(a) By the Owner. Except to the extent otherwise provided below, each owner shall have the obligation to maintain and keep in good repair all portions of his unit and all glass surfaces, windows, window frames, and all doors, doorways, frames, and hardware that are part of the entry system of the unit, patios or balconies, the air conditioning compressor serving the unit, all pipes, lines, ducts, conduits, or other apparatus which serve only the unit, whether located within or without a unit's boundaries (including all gas, electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits, or other apparatus serving only the unit.) Except to the extent otherwise provided below, each owner shall maintain all parts of the unit and all limited common elements assigned to his unit. If two or more units share limited common elements, the cost of maintenance shall be divided equally among those who share the facilities, unless otherwise agreed among the parties.

(b) By the Association. The Association shall maintain and keep in good repair as common expense the "Area of Common Responsibility," which includes all common area, the exterior surfaces of all improvements, except those listed in Section 5(a) of this Article, whether or not located within the boundaries of a unit or within the limited common elements of a unit. The Area of Common Responsibility shall include, but not be limited to: (i) roof, roofing supports, chimneys, gutters and downspouts; (ii) paving; (iii) brick; (iv) painting of doors which comprise a

boundary to a unit or limited common element, (v) exterior trim, (vi) the exterior of decks and balconies and decks and balcony supports; (vii) maintenance and repair of all parking facilities, whether or not assigned as limited common elements; (viii) all maintenance and repair of landings and stairways assigned as limited common elements; and (ix) all common property. Except to the extent that insurance required to be maintained or maintained by the Association covers any damage or loss and except as otherwise provided herein, the Association shall not be responsible for any maintenance or repair to any unit or to any limited common element.

(c) **Failure to Maintain.** If the Board of Directors determines that: (i) any owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items of which he is responsible hereunder; or (ii) that the need for maintenance, repair, or replacement which is in the Area of Common Responsibility is caused through the willful or negligent act of any owner, his or her family, guests, lessees, or invitees, and it is not covered or paid by insurance, in whole or in part, then, except in an emergency situation, the Association shall give the owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. Unless the Board of Directors determines that an emergency exists, the owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board determines that an emergency exists or if an owner does not comply with the demand given by the Association as herein provided, the Association may provide any such maintenance, repair, or replacement at the owner's sole cost and expense; and such costs shall be added to and become a part of the assessment to which such owner is subject and shall become and be a lien against the unit, as hereinafter provided.

(d) **Insurance Deductibles.** If maintenance is required as a result of an insured loss, the amount of the deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such repair in the absence of insurance. If the loss affects more than one unit or a unit and the common elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in accordance with the total cost of repair.

12. **ARCHITECTURAL CONTROLS.**

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

(b) **Architectural Standards.** Except as otherwise provided herein, no Owner, Occupant, or any other person may, without first obtaining written approval of the ACC:

- (i) make any encroachment onto the Common Elements or Limited Common Elements;
- (ii) make any exterior change, alteration, or construction (including painting and landscaping); and
- (iii) erect, place or post any object, sign, clothesline, speaker, playground equipment, light, storm door or window, fountain, flag, antenna, satellite dish or thing on the exterior or roof(s) of the building(s), in any windows (other than appropriate window treatments as provided herein), on any Limited Common Elements, or on any other Common Elements.

However, a religious symbol not larger than three inches (3") in width and nine inches (9") in height may be posted on the doorframe of the Unit. In addition, reasonable seasonal decorative lights may be displayed between Thanksgiving and January 15.

All shrubs, trees and railings within the Condominium are Common Element property and no decorations, items, objects, signs or any other thing may be posted, placed or maintained on the shrubs, trees or railings, unless previously approved by the ACC. The Association may install decorations or other items on the Common Elements, in its discretion.

No owner, occupant, lessee or lessor, or any other person may make any exterior change, alteration, or construction, nor erect, place, or post any sign, object, light, or thing on the exterior of the buildings or any other common element without first obtaining the written approval of the Board or its delegate. Application shall be in writing and shall provide such information as the Board may reasonably require. The Board or its delegate may publish written architectural standards for exterior alterations or additions and any request in substantial compliance with any such published standards shall be approved. In the event that the Board or its delegate fails to approve or to disapprove such application within sixty (60) days after it shall have been submitted, its approval will not be required and this Section 4 will be deemed complied with; provided that even if the requirements of this Section are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration or these By-Laws. As a condition of approval for a requested architectural change, modification, addition, or alteration, an owner, on behalf of himself or herself and his or her successors-in interest, shall assume all responsibility for maintenance, repair, and replacement and insurance to or on such change, modification, addition, or alteration. In the discretion of the Board an owner may be made to verify such condition of approval by written instrument acknowledged by such owner on behalf of himself or herself and his or her successors-in-interest.

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

(i) 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 modifying connection of washers and dryers, dishwashers and stoves. 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.

(ii) Relocation of Boundaries. Boundaries between adjoining Units shall not be relocated.

(iii) Subdivision of Units. No Unit shall be subdivided into a smaller Unit or Units.

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

The standard for approval of such improvements shall include, but not be limited to: (i) aesthetic consideration, (ii) materials to be used, (iii) compliance with the Community-Wide Standard, this Declaration, or the design standards which may be adopted by the Board or ACC, (iv) harmony with the external design of the existing buildings, Units and structures, and the location in relation to surrounding structures and topography, and (v) any other matter deemed to be relevant or appropriate by the Board or ACC.

If the Board or ACC fails to approve or to disapprove such application within thirty (30) days after the application and all information as the Board or ACC may reasonably require have been submitted, then 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 ten (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; provided, however, even if the requirements of this subparagraph are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Declaration, the Bylaws, or the rules and regulations of the Association or of any applicable zoning or other laws.

(e) Appeal. In the event that the ACC or its designated representative disapproves any application or part thereof, an Owner shall have the right to appeal the ACC's decision to the Board of Directors. The Board shall rule on the appeal within thirty (30) days of receiving written notice requesting an appeal from the Owner. In ruling on the appeal, the Board shall consider all relevant materials presented to it by either the Owner or the ACC, the decision of the ACC, and the application of the Owner to the ACC. The Board of Directors shall have the final authority to approve, disapprove, or conditionally approve or disapprove the application of the Owner. If the Board does not receive written notice from the Owner by certified mail requesting an appeal within fourteen (14) days from the date of the ACC's notice to the Owner of its decision, the decision of the ACC shall become final and all rights of appeal shall terminate and thereafter be void.

(f) Encroachments onto Common Elements. If any Owner or Occupant makes any 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.

(g) Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of himself or herself and his or her successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance of such change, modification, addition, or alteration, unless otherwise agreed to in writing by the ACC. It is the responsibility of every Owner of a Condominium Unit to determine for himself or herself what architectural modifications have been made to his or her Unit by any predecessor-in-interest. In the discretion of the Board or ACC, an Owner may be made to verify such condition of approval by written instrument in recordable form acknowledged by such Owner on behalf of himself or herself and all successors-in-interest.

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

(i) No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors and ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. Each Owner further acknowledges that the Board of Directors and ACC may adopt different architectural standards for different parts of the Condominium, based on street visibility and location of the proposed modification in the building. The approval of either the Board of Directors or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Board of Directors, or the ACC shall not constitute a waiver

of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

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

13. **USE RESTRICTIONS.**

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

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

(a) **Use of Units.**

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

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

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

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

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

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

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

(G) the business activity does not result in a materially greater use of common element facilities or Association services.

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

(ii) Number of Occupants. The maximum number of Occupants in a Unit shall be limited to two (2) people per bedroom in the Unit, (as such bedrooms are depicted on the original Survey and Floor Plans filed in the DeKalb County, Georgia records). "Occupancy," for purposes hereof, shall be defined as staying overnight in a dwelling for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year. This occupancy restriction shall not apply to require the removal of any person lawfully occupying a Unit on the Effective Date hereof. Upon written application, the Board shall grant variances to this restriction to comply with provisions of the Fair Housing Amendments Act of 1988 or any amendments thereto.

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

(iii) Ownership of Units. Units shall be owned by natural persons, except Units owned by a first Mortgagee who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

When ownership of a Unit is by a corporation, partnership, trust or other legal entity not being a natural person, the entity shall designate in writing to the Board the name(s) of the person(s) who will occupy the Unit, and at least one Occupant of the Unit must be an officer, director or shareholder of the corporation, trustee or beneficiary of the trust, manager of the limited liability company, or partner of the partnership. The designated person(s) to occupy the Unit may not be changed more frequently than once every twelve (12) months. The goal of this restriction is to further the purposes of the restriction on leasing of Units hereunder and the requirement of owner occupancy of Units set forth herein.

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

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

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

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

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

(d) Use of Limited Common Elements and Storage Spaces. 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.

(e) Storage Spaces. Storage spaces shall be used solely for the purpose of storing any personal property belonging to the Owner or Occupant of the Unit to which such storage space is assigned as a Limited Common Element. No Owner or Occupant shall store any explosives, or any flammable, odorous, noxious, corrosive, hazardous or pollutant materials or any other goods in the space that would cause danger or nuisance to the storage space or the Condominium. The storage space shall not be used for any purposes unlawful or contrary to any ordinance, regulation, fire code, or health code. If hazardous substances are stored, used, generated or disposed of on or in the storage space or if the storage space becomes contaminated in any manner for which the Owner or Occupant thereof is legally liable, Owner or Occupant shall indemnify and hold harmless the Association and Board of Directors from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses and any and all sums paid from settlement of claims, attorneys' fees, consultant and expert fees, arising as a result of that contamination by Owner or Occupant.

(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 11:00 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 Elements by any other Owner, members of his or her family, guests, invitees, or Occupants of his or her Unit.

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

No Unit Owner or Occupant may use or allow the use of the Unit or the Common Elements in any manner which creates noises between the hours of 11:00 p.m. and 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 and Fireworks.** The display or discharge of firearms or fireworks on the Common Elements or Limited Common Elements is prohibited; provided, however, that the display of lawful firearms on the Common Elements or Limited Common Elements is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Elements or Limited Common Elements to or from the Owner's Unit. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A. § 25-10-1, as amended.

(h) **Pets.** No Owner or Occupant may keep any animals other than generally recognized household pets on any portion of the Condominium, and no Owner or Occupant may keep more than two (2) pets per Unit.

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. All pets 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 porches or balconies

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 animals determined in the Board's sole discretion to be dangerous may be brought onto or kept on the Condominium at any time. The Board may require that any pet which, in the Board's opinion, endangers the health of any Owner or Occupant or creates a nuisance or unreasonable disturbance, be permanently removed from the Condominium upon seven (7) days written notice. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet and/or obtain a court order requiring the Owner or Occupant to do so. Without prior notice to the pet's owner, the Board may remove any pet, which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any community member.

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

(i) Parking. No Owner or Occupant may keep or bring onto the Condominium more than two (2) vehicles per Unit. Vehicles permitted under this subparagraph may be parked only in designated, lined parking spaces, or other areas authorized in writing by the Board, and must be parked so that the headlights face the curb.

No vehicle other than a passenger vehicle shall be authorized to park on the Common Elements (as defined in Section 5 of the Declaration). Without limiting the generality of the foregoing, the following are strictly prohibited from being parked, stored or to remain on the Common Elements at any time: abandoned, disabled or stored vehicles, motorcycles, boats, boat trailers, campers, buses, taxis, hearses, limousines, motor homes, vehicles with camper tops, trailers of any kind, recreational vehicles, any vehicle greater than seven (7) feet wide, any vehicle greater than twenty (20) feet long, any vehicle with more than four (4) wheels, vehicles primarily designed for commercial purposes, or showing visible evidence of commercial use (such as tool boxes, tool racks, ladders, ladder racks, or towing winches) and vehicles with commercial writings on their exteriors (except for law enforcement vehicles marked as such).

Vehicles with open beds are strictly prohibited. Vehicle beds shall be enclosed with Board-approved caps or covers manufactured to enclose or conceal a vehicle's cargo bed (but not camper tops or tarps). Notwithstanding the above, in the case of commercial service vehicles, such vehicles may be allowed temporarily on the Common Elements during normal business hours for the purpose of serving any Unit or the Common Elements; provided that no such vehicle shall be authorized to remain on the Common Elements overnight. All parking shall be governed by the Association as set forth in the Declaration and Bylaws.

For purposes hereof, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable. A vehicle shall be considered "stored" if it remains on the Condominium for fourteen (14) consecutive days or longer without prior written Board permission.

Additionally, any water craft, jet-skis and trailers for same, buses, trucks with a load capacity of one (1) ton or more, vans (excluding vans used by handicapped persons, mini-vans or sport utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Georgia Department of Motor Vehicles), are also prohibited from being parked anywhere in the Condominium, except in any areas that may be designated by the Board as parking areas for particular types of vehicles, if any.

If any vehicle is parked on any portion of the Condominium in violation of this Paragraph or in violation of the Association's rules and regulations, the Board or agent of the Association may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed or booted. The notice shall include the name and telephone number of the person or entity that will do the towing or booting and the name and telephone number of a person to contact regarding the alleged violation. If twenty-four (24) hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six (6) months of such notice, the Board or agent of the Association may have the vehicle towed or booted in accordance with the notice, without further notice to the vehicle owner or user.

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

(j) Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to any portion of the Condominium, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" position and at a minimum temperature setting of fifty-five (55°) degrees Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two (32°) degrees Fahrenheit or below. Owners and Occupants of Units shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Unit Owner or Occupant shall immediately inform the Association of this failure of the equipment and of the time needed to repair the equipment. The Board may fine any Owner or Occupant up to five hundred (\$500.00) dollars or may cause the water service to the violator's Unit to be discontinued for violation of this subparagraph, in addition to any other remedies of the Association.

(k) Signs. Except as may be provided for herein or as may be required by legal proceedings, no signs, advertising posters, political placards or billboards of any kind shall be erected, placed, or permitted to remain on the Condominium without the prior written consent of the Board or its designee, except that one (1) professional security sign not to exceed six (6") inches by six (6") inches in size and one (1) professional realtor sign not to exceed two (2') feet by four (4') feet in size may be displayed from within the window a Unit. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. Additionally, political campaign signs shall also be authorized to be displayed in the window of a Unit for eight (8) weeks before and after any political campaign.

(l) Rubbish, Trash, and Garbage. 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 or Limited Common Elements outside the Unit, temporarily or otherwise, except in authorized receptacles. Rubbish, trash, and garbage shall be disposed of in appropriate sealed bags and placed in the proper receptacles designated by the Board for collection or removed from the Condominium.

(m) 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 or hereditaments, nor do any act nor allow any condition to exist which will adversely affect the other Units or their Owners or Occupants.

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

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

(p) Window Treatments. Unless otherwise approved in writing by the Board, all windows in Units shall have window treatments and any portion thereof visible from outside the Unit shall be white or off-white in color.

(q) Antennas and Satellite Dishes. Except as provided below, no satellite dish, antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained on any portion of the Condominium, including the Unit or Limited

Common Elements; provided, however, that the Association shall have the right to erect, construct and maintain such devices. The following shall apply to all Unit Owners:

(i) No transmission antenna, of any kind, may be erected anywhere on the Condominium, including the Units, without written approval of the Board of Directors or the Architectural Control Committee.

(ii) No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) antenna larger than one meter in diameter shall be placed, allowed or maintained upon the Condominium, including the Units and the Limited Common Elements.

(iii) DBS and MMDS satellite dishes or antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association, both as may be amended from time to time.

(r) **Grilling.** The use of outdoor grills on any portion of the Condominium building(s) or Common Elements, except in the designated grill areas, is governed by applicable state laws and local ordinances having jurisdiction over the Condominium.

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

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

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

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

14. **LEASING.**

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

(a) **Definitions.**

(i) **"Effective Date"** means the date this Declaration is recorded in the DeKalb County, Georgia land records.

(ii) **"Leasing"** shall mean the regular, exclusive occupancy of a Unit by any person(s) other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, rent, gratuity, or emolument. For purposes hereof the following shall not constitute leasing: (A)

occupancy by a roommate of an Owner; (B) occupancy by an Owner's parent, grandparent, spouse, domestic partner or former spouse or domestic partner, sibling or child of an Owner, which relationship shall be demonstrated to the Board on request by providing a copy of a birth certificate or similar document satisfactory to the Board; (C) occupancy by one or more wards if the Unit is owned by their legal guardian; (D) occupancy by one or more beneficiaries of a trust if the Unit is owned in trust by the trustee; or (E) occupancy by an Authorized Corporate Occupant (see below). For purposes hereof, occupancy by a roommate of an Owner who occupies a Unit continuously and at all times resides in and occupies the Unit as such Owner's primary residence shall not constitute Leasing hereunder; however, occupancy of any Unit by any roommate of an Owner, where said Owner does not continuously and at all times reside in and occupy a Unit as such Owner's primary residence, shall be deemed to constitute Leasing hereunder and said occupancy/tenancy shall be subjected to all of the rules, restrictions and regulations set forth herein. Moreover, for purposes hereof, occupancy by any tenant, renter, lessee, guest, invitee or other similar person who in any way compensates any Owner for any right to enter or occupy a Unit for any period of time, and who is not otherwise qualified as a roommate hereunder, shall be deemed to constitute Leasing hereunder and same shall be governed by and subject to all of the rules, restrictions and regulations set forth herein. Additionally, a Unit may be considered leased hereunder even if no rent is paid to the Owner if the occupant does not constitute one of the occupants exempted from leasing above. The Board shall have the power to make and enforce reasonable rules and regulations, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this Section.

(iii) **"Authorized Corporate Occupant"** means an officer, director, shareholder or member 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 any 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.

(iv) **"Grandfathered Owner"** means an Owner who is lawfully leasing his or her Unit on the date this Amendment is recorded in the DeKalb County, Georgia, land records (the "Effective Date") or who does so within ninety (90) days of the Effective Date. **To qualify as a Grandfathered Owner, the Owner must, within ninety (90) days of the Effective Date, provide the Board with a copy of the lease in effect.** Grandfathering shall automatically expire and any lease of the Unit shall automatically terminate on the date the Grandfathered Owner conveys title of the Grandfathered Unit to any Person (other than the Owner's spouse), or on the date that the Owner once again occupies the Unit as his or her primary residence.

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

(vi) **"First Mortgagee"** means any entity that lends money to a borrower for the purpose of purchasing a piece of real property in the Avondale Estates community which is the subject of a First Mortgage defined in the Declaration.

(b) **Authorized Permitted Leasing.**

Leasing of Units is allowed only by: (i) a Grandfathered Owner; (ii) a non-Grandfathered Owner who has received a Leasing Permit as provided below; (iii) a non-Grandfathered Owner who has received a Hardship Leasing Permit as provided below; (iv) the Association or (v) any First Mortgagee who becomes the Owner of a Unit in satisfaction of its Mortgage.

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).

(c) Leasing Permits and Restriction.

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 twenty five percent (25%) of the total Units; provided, however, a Leasing Permit shall not be issued to any Owner who is in violation of the Association's governing instruments and attendant documents, as last amended, including the Association's Rules and Regulations. 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.

A Leasing Permit shall be automatically revoked upon the happening of any of the following events: (i) the sale or transfer of the Unit to a third party (excluding sales or transfers to an Owner's spouse, a person cohabitating with the Owner, or a corporation, partnership, company, or legal entity in which the Owner is a principal); (ii) the failure of an Owner to lease his or her Unit within ninety (90) days of the Leasing Permit having been issued; (iii) the failure of an Owner to have his or her Unit leased for any consecutive ninety day (90) period thereafter; or (iv) the occurrence of the date referenced in a written notification by the Owner to the Association that the Owner will, as of said date, no longer need the Leasing Permit.

(i) Hardship Leasing Permits. If the failure to lease will result in an undue hardship to the Owner, then the Owner may seek to lease on a hardship basis by applying to the Board of Directors for a hardship leasing permit. The Board shall have the authority to issue or deny requests for hardship leasing permits in its discretion after considering the following factors: (A) the nature, degree, and likely duration of the hardship, (B) the harm, if any, which will result to the Condominium if the permit is approved, (C) the number of hardship leasing permits which have been issued to other Owners, (D) the Owner's ability to cure the hardship, and (E) whether previous hardship leasing permits have been issued to the Owner.

A "hardship" as described herein shall include, but not be limited to, the following situations: (A) an Owner must relocate his or her residence outside the greater Atlanta metropolitan area and cannot, within six (6) 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; (B) an Owner dies and the Unit is being administered by his or her estate; or (C) an Owner takes a leave of absence or temporarily relocates out of the metropolitan-Atlanta area and intends to return to reside in the Unit within one (1) year. Greater Atlanta metropolitan area is defined to include the following counties in Georgia: Fulton, DeKalb, Gwinnett, Cobb, Clayton, Butts, Cherokee, Douglas, Fayette, Forsyth, Henry, Newton, Rockdale, Walton, Barrow, Bartow, Coweta, Paulding, Pickens and Spalding and may be expanded or contracted at the sole discretion of the Board.

Hardship leasing permits shall be valid for a term not to exceed one (1) year. Owners may apply for additional hardship leasing permits at the expiration of a hardship leasing permit, if the circumstances warrant; but no Owner shall lease a Unit for a period of time that exceeds two (2) years.

Hardship leasing permits are automatically revoked upon the happening of any of the following events: (A) the sale or transfer of the Unit to a third party (excluding sales or transfers to an Owner's spouse); or (B) the failure of an Owner to lease his or her Unit for ninety (90) consecutive days at any time after the issuance of a hardship leasing permit, or (C) the date that the Owner once again occupies the Unit as his or her primary residence. The Board also may revoke the hardship leasing permit held by any Owner if the Owner or Occupant violates the Association's governing instruments and attendant documents, as last amended, including the Association's Rules and Regulations.

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

(i) General. Units may be leased only in their entirety; no rooms or fractions of Units may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. 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 (1) year,

except with written Board approval. Within ten (10) days after executing a lease agreement for the lease of a Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Unit. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee.

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

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

If a Unit is leased or occupied in violation of this Paragraph or if the Owner, lessee, or a person living with the lessee, violates the Declaration, Bylaws, or a rule or regulation, the Association's Board of Directors shall be authorized, in addition to all other available remedies, to levy fines against the lessee and/or the Owner, to suspend all voting and/or Common Element use privileges of the Owner, Occupants and unauthorized tenant(s) and to suspend all common services to the Unit paid for by the Association as a common expense, including water service to the Unit, subject to the provisions of this Declaration and the Bylaws.

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

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

(C) **Liability for Assessments.** When an Owner who is leasing his or her Unit fails to pay any annual or special assessment or any other charge for a period of more than sixty (60) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual and special assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. However, lessee need not make such payments to the Association in excess of, or prior to the due dates for, monthly rental payments unpaid at the time of the Board's request. All such payments made by lessee shall reduce, by the same amount, lessee's obligation to make monthly rental payments to lessor. If lessee fails to comply with the Board's request to pay assessments or other

charges, lessee shall pay to the Association all amounts authorized under the Declaration as if lessee were an Owner. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

(D) Lease/Rental 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, except with written Board approval. Rentals of a Unit or portion of a Unit on a short time basis such as HomeAway rentals, AirBnB rentals, and VRBO rentals are strictly prohibited regardless of whether the Owner of the Unit is present during the rental period.

(e) Applicability of this Paragraph. Notwithstanding the above, this Paragraph shall not apply to any leasing transaction entered into by the Association.

15. SALE OF UNITS & CAPITAL CONTRIBUTION FEE.

A Unit Owner intending to make a transfer or sale of a Unit or any interest in a Unit shall give written notice to the Board of Directors of such intention within fourteen (14) days after execution of the transfer or sales documents. The Unit Owner shall furnish to the Board as part of the notice (a) the name and address of the intended grantee; and (b) such other information as the Board may reasonably require. This Paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

Within fourteen (14) days after receiving title to a Unit, the purchaser of the Unit shall give written notice to the Board of Directors of his or her ownership of the Unit. Upon failure of an Owner to give the required notice within the fourteen (14) day time period provided herein, the Board may levy fines against the Unit and the Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity. At the time of the sale, a capital contribution of one-sixth ($1/6^{\text{th}}$) of the total yearly assessment shall be assessed in accordance with this Declaration as outlined hereinabove.

16. INSURANCE.

The Association shall obtain and maintain at all times, as a Common Expense, insurance as required by Section 44-3-107 of the Act, as amended, and as required herein. To the extent reasonably available at reasonable cost, the Association's insurance policy shall cover any of the following types of property contained within a Unit, regardless of ownership: fixtures, improvements and alterations that are part of the building or structure. In the alternative, the Association's insurance policy may exclude improvements and betterments made by the Unit Owner and may exclude the finished surfaces of perimeter and partition walls, floors, and ceilings within the Units (i.e., paint, wallpaper, paneling, other wall covering, tile, carpet and any floor covering), provided, however, floor covering does not mean unfinished hardwood or unfinished parquet flooring.

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

The Board 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 obligation in accordance with subsection (h) hereinbelow, to obtain additional coverage at his or her own expense.

All insurance coverage for the Association shall be written in the name of the Association as trustee for itself, each of the 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, as amended. 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, as amended.

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

- (i)** ordinance or law coverage, demolition cost coverage and increased cost of construction coverage;
- (ii)** 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;
- (iii)** any "other insurance" clause contained in the master policy shall expressly exclude individual Unit Owners' policies from its operation;
- (iv)** until the expiration of thirty (30) days after the insurer gives notice in writing to the Mortgagee of any Unit, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit, the other Unit Owners, the Board of Directors, or any of their agents, employees, or household members, nor be canceled for nonpayment of premiums;
- (v)** the master policy may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days prior notice in writing to the Board of Directors and all Mortgagees of Units; and
- (vi)** an agreed value endorsement and an inflation guard endorsement.

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

(d) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees. Each Unit Owner shall notify the Board of Directors of all structural improvements made by the Unit Owner to his or her Unit. Unit Owners shall provide copies of each individual insurance policy covering any portion of the Condominium, other than improvements and betterments made by such Owner at his or her expense and personal property belonging to such Owner, upon request of the Board of Directors. Additionally, such Owner shall also promptly notify, in writing, the Board of Directors in the event such policy is cancelled and such Owner shall promptly replace such cancelled policies within ten (10) days of the date of any such cancellation.

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

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

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

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

(f) Insurance carried by the Association as a Common Expense shall not be required to include: (i) any part of a Unit that is not depicted on the original Survey and Floor Plans; or (ii) 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) 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 Unit Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee.

(h) Every Unit Owner shall be obligated to obtain and maintain at all times insurance covering those portions of his or her Unit to the extent not insured by policies maintained by the Association. Upon request by the Board, the Unit Owner shall furnish a copy of such insurance policy or policies to the Association. Failure to submit a copy of the relevant insurance policy or policies to the Association subjects the Unit Owner to all enforcement remedies in the Declaration and attendant documents. In the event that any such Unit Owner fails to obtain insurance as required by this subparagraph, the Association may purchase such insurance on behalf of the Unit Owner and assess the cost thereof to the Unit Owner, to be collected in the manner provided for collection of assessments under Paragraph 10 hereof.

(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 (1) Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected owner's portion of the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Unit Owner shall be responsible for paying the deductible pertaining to his or her Unit, if any. If any Owner or Owners fail to pay the deductible when required under this subparagraph, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to Paragraph 8(b) of this Declaration; provided, however, where the deductible is for insurance required under the Act, no Owner shall be assigned more than Five Thousand and No/100 Dollars (\$5,000.00), or such higher amount as authorized by the Act, as the cost of the deductible for any one (1) occurrence. If the Association elects to obtain additional, optional insurance coverage (over and above what is required by the Act), including, but not limited to, water damage coverage, the provisions hereinabove related to deductibles shall also apply, except that where the deductible is for insurance NOT required by the Act, an Owner may be assigned the full, actual cost of the deductible and shall not be capped at the limits set by the Act.

(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 Paragraph 9 hereof, 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 Unit Owner.

17. **REPAIR AND RECONSTRUCTION.**

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

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

(b) **Source and Allocation of Proceeds.** If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to failure of the Association to maintain coverage as provided in Paragraph 15 of this Declaration, the additional cost shall be a Common Expense. If, for any reason, the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair, as determined by the Board, the additional costs shall be assessed against the Owners of the Unit(s) damaged in proportion to the damage to the Units or against all Owners, in the case of insufficient funds to cover damage to the Common Elements. This assessment shall not be considered a special assessment under Paragraph 9(e) hereof. 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) **Floor Plans and Specifications.** Any such reconstruction or repair shall be substantially in accordance with the Floor Plans and specifications under which the Condominium was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original Floor Plans and specifications are approved by the Board of Directors. To the extent insurance proceeds are available, the Association may reconstruct or repair Owner improvements damaged as a result of fire or other casualty.

(d) **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.

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

18. **EMINENT DOMAIN.**

In the event of a taking by condemnation or by eminent domain, the provisions of the Act shall prevail and govern; provided, however, that any proceeds received for a taking of the Common Elements (other than Limited Common Elements) by condemnation or eminent domain shall, at the option of the Board, either be allocated to the Owners pursuant to O.C.G.A. § 44-3-97(a), as amended, or be deposited into the Association's operating account or reserve account to be applied to Common Expenses. Each 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.

19. EASEMENTS APPERTAINING TO UNITS AND UNIT OWNERS.

(a) **General.** Each Unit Owner and Occupant shall have a right and non-exclusive easement of use and enjoyment in and to the Common Elements (including the right of access, ingress and egress to and from his or her Unit over those portions of the Condominium designated for such purpose), and such easement shall be appurtenant to and shall pass with the title to such Unit, subject to the rights of the Unit Owners to the exclusive use of the Limited Common Elements assigned to their respective Units and to the right of the Association to control the use and enjoyment of the Common Elements as provided by the terms of this Declaration including, but not limited to, the right of the Association to suspend voting and use privileges as provided herein. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit. All portions of the Condominium also shall be subject to easements of encroachment as provided in the Act.

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

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

(c) **Utilities.** To the extent that the sprinkler system or any utility line, pipe, wire, or conduit serving any Unit, Units or the Common Elements shall lie wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit, Units, or the Common Elements shall be burdened with a non-exclusive easement for the use, maintenance, repair and replacement of such sprinkler system, utility line, pipe, wire or conduit, such non-exclusive easement to be in favor of the Unit, Units, or Common Elements served by the same and the Association. It shall be the obligation of the benefited Owner to maintain, replace and repair any pipe, line, conduit, duct or wire owned by such Owner, even if such pipe, line conduit, duct or wire is located within the boundaries of a Unit of another Owner. In such circumstance, the benefited Owner shall repair all incidental damage to any Unit resulting from performance of any such work. All Unit Owners hereby covenant and agree that as finish levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready". Components that may require repair or replacement, such as tile and trim, will be reinstalled only to the extent of readily available materials or similar materials (trim and such will also be finished to "paint-ready"). Due to the uncontrollability of quality of repair, items such as faux paint treatment, wallpaper, ceiling/wall appliqué, and any other similar types of finishes, will be the responsibility of the benefited Owner.

However, at the sole expense of the Association, without need for a membership vote, and without the consent of any affected Unit Owner, the Board of Directors, on behalf of the Owner can relocate any portion of the air conditioning, heating, plumbing, ventilating, exhaust or electrical system serving a particular Unit, provided that after such relocation, the system serving the Unit functions at least as well and at no greater cost to the Unit Owner as existed prior to the relocation.

(d) **Pest Control.** The Association may but shall not be obligated to dispense treatments for the extermination of insects and pests within the Units and Common Elements in a manner, degree, and type determined in its sole discretion. In the event the Association chooses to provide such pest control, the Association and its duly authorized contractors, representatives, and agents shall have an easement to enter Units for the purpose of dispensing treatments for the exterminating of insects and pests within the Units and Common Elements. Unit Owners shall either provide a key to the Unit for purpose of such entry or have someone available at such times as are designated by the Board of Directors to allow entry into the Unit for this purpose.

The Association shall not be liable for any illness, damage, or injury caused by the dispensing of these treatments for this purpose.

(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 DeKalb County, Georgia records. The Board of Directors hereby reserves the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Condominium), all or any portion of the Condominium that, in the reasonable opinion of the Board, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration.

(f) **Easement for Walking Trail.** There is hereby reserved for all persons residing within the city limits of Avondale Estates, Georgia, a non-exclusive easement for ingress and egress and use and enjoyment of the approximately four (4) foot wide paved walking/heart trail located on the Common Elements of the Condominium.

20. **MORTGAGEE'S RIGHTS.**

(a) Unless at least two-thirds (2/3) of the first Mortgagees and two-thirds (2/3) of the Unit Owners give their consent, the Association or the membership shall not:

(i) by act or omission seek to abandon or terminate the Condominium;

(ii) change the pro rata interest or obligations of any individual Unit for the purpose of (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;

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

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

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

The provisions of this subparagraph shall not be construed to reduce the percentage vote that must be obtained from Mortgagees 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 Mortgagee 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:

(i) 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;

(ii) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a first Mortgage held by such Eligible Mortgage Holder which remains unsatisfied for a period of sixty (60) 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 sixty (60) days;

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

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

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

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

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

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

21. **AUTHORITY AND ENFORCEMENT.**

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

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

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

(a) **Fining and Suspension Procedure.** The Board shall not impose a fine, suspend the right to vote or suspend the right to use the Common Elements, unless and until the Association has sent or delivered written notice to the violator as provided in subparagraph (i) below. However, compliance with this subparagraph shall not be required for the following: (i) late charges on delinquent assessments; (ii) suspension of voting rights if an Owner

is shown on the Association's records to be more than sixty (60) days delinquent in any payment due the Association, in which case suspension of the right to vote shall be automatic; (iii) suspension of the right to use the Common Elements if an Owner is shown on the Association's records to be more than sixty (60) days delinquent in any payment due the Association, in which case suspension of the right to use the Common Elements shall be automatic; provided, however, suspension of parking privileges shall require compliance with Paragraph 9(c)(iii) above; and (iv) suspension of common utility services, which shall require compliance with the provisions of Paragraph 9(c)(iv) above.

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

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

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

The Association or its duly authorized agent shall have the power to enter upon any portion of the Condominium to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws or the Association rules and regulations. If the Association exercises its rights under this subparagraph, all costs of self-help, including, reasonable attorneys' fees actually incurred, shall be assessed against the violating Owner and/or Occupant and shall constitute a lien against the Unit. Additionally, the Association shall have the authority to record in the DeKalb County, Georgia land records a notice of violation identifying any uncured violation of the Declaration, Bylaws or rules and regulations regarding the Unit.

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

22. **AMENDMENTS.**

(a) **Membership Approval.** Except where a higher vote is required for action under any other provision of this Declaration or the Act, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding two-thirds (2/3) of the total eligible Association vote and approval of a majority of the Association directors.

Notice of any meeting at which a proposed amendment will be considered shall state the subject matter of the proposed amendment. No amendment shall be effective until certified by the Association President and Secretary and recorded in the DeKalb 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 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, 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 the above, and subject to Paragraph 19 hereof, material amendments to this Declaration 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.

(d) **Amendment by Board.** Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the Owners, may amend this Declaration to correct any scrivener's errors, comply with any applicable state, city or federal law, and/or to bring the Condominium into compliance with applicable rules and regulations of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA") pursuant to federal law.

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

23. **GENERAL PROVISIONS.**

(a) **Security.** The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security on the Condominium; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and the Association shall not have a duty to provide security on the Condominium. Furthermore, the Association does not guarantee that non-Unit Owners and non-Occupants will not gain access to the property and commit criminal acts on the property, nor does the Association guarantee that criminal acts on the property will not be committed by other Unit Owners or Occupants. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Unit Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of measures undertaken.

(b) **Parking Spaces, 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 water or acid damage, to any property placed or kept in any parking space or storage space in the Condominium. Each Owner or Occupant with use of a parking space or storage space who places or keeps a vehicle and/or any personal property in the vehicle, parking space or storage space does so at his or her own risk.

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

(d) **Party Walls.**

(i) **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 (2) 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.

(ii) **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.

(iii) **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.

(iv) **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.

(v) **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Paragraph, each party shall appoint one (1) arbitrator. Should any party refuse to appoint an arbitrator within ten (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 (1) additional arbitrator and the decision by a majority of all three (3) 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) **No Discrimination.** No action shall be taken by the Association or the Board of Directors that would unlawfully discriminate against any person on the basis of race, creed, color, national origin, religion, sex, sexual orientation, familial status or handicap.

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

(g) **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.

(h) **Duration.** The covenants and restrictions of this Declaration shall run with and bind the Property perpetually to the extent provided in the Act.

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

(j) **Preparer.** This Declaration was prepared by John D. Andrie, Esq., Cobb, Olson & Andrie, LLC, 500 Sugar Mill Rd., Suite 160B, Atlanta, Georgia, 30350.

[SIGNATURES CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned Officers of Avondale Estates Condominium Association, Inc., hereby certify that this Amended and Restated Declaration and the following restated Bylaws were duly adopted by the required majority of the Association and its membership, with any required notices duly given.

This 26th day of February, 2020.

AVONDALE ESTATES CONDOMINIUM ASSOCIATION, INC.

Sworn to and subscribed before me this 26 day of FEBRUARY 2020.

By: [Signature] (Seal)
President

[Signature]
Witness

Attest: [Signature] (Seal)
Secretary

[Signature]
Notary Public May 21, 2021

[Corporate Seal]

[Notary Seal]

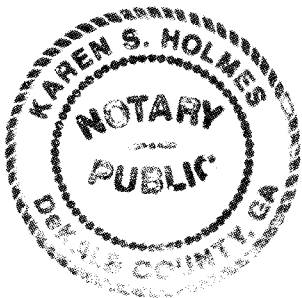


Exhibit "A"

DESCRIPTION OF SUBMITTED PROPERTY

The Condominium is located in Land Lot 217 of the 15th District, DeKalb County, Georgia. The Property, which is submitted by this Declaration to the Act, is described in Exhibit "A" to that certain Declaration of Condominium for The Condominium of Avondale Estates, recorded on the real estate records of DeKalb County at Deed Book 5064, Page 147 and as last amended. A Plat of Survey has been filed in the Condominium Plat Book Five, Pages 96-98, DeKalb County, Georgia Records along with Plans of every building which contains a unit located on the Property in the Condominium Project Floor Plans File No. 4952, DeKalb County, Georgia Records. The aforementioned Exhibit "A", the Plat of Survey and Plans are hereby incorporated herein by reference as fully as if the same were set forth in their entirety herein.

Exhibit "B"

UNDIVIDED PERCENTAGE INTEREST IN THE COMMON ELEMENTS AND LIABILITIES FOR
COMMON EXPENSES/LIMITED COMMON ELEMENT ASSIGNMENTS.

Pursuant to Section 15 of the Act (O.C.G.A. § 44-3-78), each unit is allocated a percentage of undivided interest in the common elements equal to that assigned to every other unit.