

02

DECLARATION OF CONDOMINIUM FOR  
PLANTATION POINT CONDOMINIUM  
OF HAMPTON PLANTATION  
ST. SIMONS ISLAND,  
GLYNN COUNTY, GEORGIA

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FOR PLANTATION POINT CONDOMINIUM

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DECLARATION OF CONDOMINIUM FOR  
PLANTATION POINT CONDOMINIUM

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THIS DECLARATION is made on this 4<sup>th</sup> day of MARCH, 1986, by HAMPTON ASSOCIATES, a Georgia general partnership having as its sole partner Robert G. Boone, of Glynn County, Georgia (hereinafter referred to as the "Declarant");

WHEREAS, the Declarant is the owner in fee simple of certain real property located on St. Simons Island, Glynn County, Georgia, being more particularly described in Exhibit "A" attached hereto and by reference made a part hereof (the "Land"); and

WHEREAS, Declarant desires to submit a portion of said Land to the provisions of the Georgia Condominium Act, pursuant to the terms and provisions of this Declaration; and

WHEREAS, Declarant has or is in the process of constructing twenty-four (24) condominiums upon a portion of the Land described in Exhibit "B", hereto attached and by reference made a part hereof (which portion of the Land together with the improvements constructed thereon, shall be referred to as the "Property" or the "Condominium Property"), and the Declarant desires to submit the real property described in Exhibit "B" to the condominium form of ownership; and

WHEREAS, Declarant also desires to provide for the subsequent development of that portion of Land which is not included in the Condominium Property, (which portion of the Land shall hereinafter

be referred to as the "Additional Property") and all or portions of which Additional Property together with any improvements constructed thereon may in the future be submitted to the condominium form of ownership by written amendment or amendments to this Declaration, as hereinafter provided; and (17

WHEREAS, the boundary surveys, which delineate the Land, the Additional Property and the Condominium Property together with the improvements constructed or to be constructed upon the Condominium Property, are identified in Exhibit "C" hereto attached, and by this reference made a part hereof.

DECLARATION:

NOW THEREFORE, the Declarant does hereby submit the Condominium Property, together with all of the improvements located thereon, and together with those easements which are described in Exhibit "B" as being appurtenant to the Condominium Property to the provisions of the Georgia Condominium Act (the "Act"). From and after the date on which this Declaration is recorded, the Condominium Property and appurtenant improvements located thereon, shall be owned, held, sold, transferred, conveyed, used, occupied, mortgaged or otherwise encumbered subject to the following covenants, conditions and restrictions which shall be binding upon all parties having or acquiring any right, title or interest in the Condominium Property or any part thereof and shall inure to the benefit of each owner thereof.

The name of the condominium shall be "PLANTATION POINT CONDOMINIUM".

ARTICLE I

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DEFINITIONS

Section 1.01. Definitions: Except as provided herein, the definitions set forth in the Act shall apply to this Declaration and all other Condominium Instruments. In addition to the definitions contained in the Act, the following definitions shall apply to this Declaration and all other Condominium Instruments covering the Condominium Property.

"Act" shall mean the Georgia Condominium Act, Georgia Laws 1975, pp. 609 through 671, as amended.

"Additional Property" shall mean the additional property described in Exhibit "A" but not included in the Condominium Property which may be submitted to the Condominium in accordance with the provisions of Article X of this Declaration and of the Act.

"Association" shall mean the Plantation Point Condominium Association, Inc., a Georgia nonprofit membership corporation formed for the purpose of exercising the powers of the Association under the Declaration, the Articles of Incorporation, the Bylaws, the Act and the Georgia Nonprofit Corporation Code.

"Board" or "Board of Directors" shall mean the Board of Directors of the Association, the members of which shall be appointed and elected from time to time as provided in this

Declaration, the Articles of Incorporation, the Bylaws, and the Act.  
The Board of Directors shall be the governing body of the  
Association. 09

"Bylaws" shall mean the Bylaws of the Association as the same  
now exist or may hereafter be amended.

"Condominium Instruments" shall include this Declaration, the  
Articles of Incorporation, the Bylaws of Plantation Point  
Condominium Association, Inc., the Condominium Plat or Plats, the  
Building Plans and all other documents, rules and regulations  
promulgated pursuant to the authority created herein and by the Act,  
as said instruments may be amended from time to time.

"Condominium Unit" shall mean a unit as defined in the Act,  
together with the undivided interest in the common elements  
appertaining to that unit. Condominium unit or units may sometimes  
hereinafter be referred to as "unit" or "units".

"Declarant" shall mean the person who executes this  
Declaration, their heirs, successors and assigns as provided for in  
the Act.

"Expandable Condominium" shall mean a condominium to which  
additional property may be added in accordance with the Act and this  
Declaration.

"Foreclosure" shall include the exercise of a power of sale  
contained in any mortgage or other instrument conveying a lien or  
security title to a unit.



"Limited Common Elements" shall mean those portions of the common elements described in Section 2.05, and reserved for the exclusive use of owner or occupants of a particular unit or units as set out in Exhibit "D" to this Declaration. 10

"Plans" or "Building Plans" means the "Plans for Plantation Point Condominium" identified in Exhibit "D" to this Declaration, prepared by Ussery & Rule, Architects, P.C., depicting the buildings and condominium units constructed on the Condominium Property, or subsequently constructed on any portion of the Additional Property which may be submitted to the provisions of the Act and to the provisions of this Declaration, which are filed or will be filed for record in the Office of the Clerk of the Superior Court of Glynn County, Georgia.

"Plat" or "Condominium Plat" means that certain print of a plat of survey for Plantation Point Condominium, Phase One, prepared by James L. Conine, Registered Land Surveyor No. 1545, identified in Exhibit "C" to this Declaration, and any amendment thereto.

"Recorded", "Filed" or "Filed for Record" means filed for record with the Clerk of the Superior Court of Glynn County, Georgia.

"Unit Number" means the identifying numbers, letters, symbols or words or combination thereof that identify each unit in Plantation Point Condominium.

ARTICLE II

PROPERTY RIGHTS

Section 2.01. Unit Information. Attached hereto, incorporated herein and made a part hereof by reference thereto is Exhibit "D", which is a list of all condominium units constructed on the Condominium Property, their unit designations, number of rooms, and the percentage of interest in the common elements appertaining to each unit. Each unit will have a separate meter for utility services provided to that unit.

Section 2.02. Units. Each unit, herein defined as including the land on which it is constructed, together with its undivided interest in the common elements, shall for all purposes constitute real property which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other real property, subject to the terms, provisions and conditions of this Declaration and the Act. Each owner shall be entitled to the exclusive ownership and possession of his or her unit, subject to the provisions of the Act and this Declaration. Each unit shall include all of the space and improvements within the boundaries thereof.

The units shall have no horizontal boundaries. The vertical boundaries shall be the finished exterior surface of the exterior walls of the units and the center line of all party walls as shown on Condominium Plat; provided, however, that there shall be deemed to be included within said unit boundaries all attachments to the exterior walls of a unit, including but not limited to windows,

screens, hardware, window boxes, which are a part thereof or which protrude beyond the boundaries.

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In the event that any portion of the Additional Property shall be added to the Condominium pursuant to the provisions of Article X hereof, the boundaries of the units to be located on such portion of the Additional Property shall be described in the amendment to this Declaration which shall be executed and recorded, for the purpose of expanding the property subject to this Declaration so as to include the submitted portion of the Additional Property.

Section 2.03. Common Elements. The term "Common Elements" as used herein, shall mean all of the Condominium Property, including, without limitation, all of the real property and improvements, except units, including without limitation, the following:

(a) All central and appurtenant equipment for services such as power, lights, telephone, gas, cable television and water which are not separate facilities;

(b) All sewer lines serving more than one unit and/or the common elements;

(c) Recreational facilities;

(d) All service and maintenance facilities;

(e) All walks, curbing, pavement, location signs, shrubbery, trees and other landscaping;

(f) All easements for vehicular and pedestrian ingress and egress to Plantation Point Condominium from Hampton Point Drive as shown on the Condominium Plat; and

(g) All other parts of the Condominium Property and all appurtenances and installations in the building(s) intended for common use or necessary or convenient to the existence, operation, maintenance and safety of the Condominium Property.

Section 2.04. Limited Common Elements. Ownership of each unit shall entitle the owner or owners thereof to the exclusive use of any limited common element area assigned to such unit. The limited common elements located on the Condominium Property, and the units to which the same are assigned, are described in Exhibit "D", attached hereto and by reference incorporated herein. Each owner shall have an exclusive easement for the use of the porches serving his particular unit. In the event that front porches and entry steps serve more than one unit, the owner of the units served shall have an exclusive easement for the use of that portion of the porch in front of their unit and an easement to use the entry steps in common with the adjoining unit owner. The reservations herein set forth and the easement created hereby shall not be enlarged, diminished, or varied by any custom, practice or usage, and shall be deemed to be conveyed and transferred with the unit to which it is assigned, even though not specifically referred to in the deed of conveyance or other instrument conveying or transferring title of such unit or creating a security interest in such unit.

Section 2.05. Ownership of Common Elements. The common elements shall be for the common use of all unit owners, except for limited common elements which are reserved for the exclusive use of

a particular unit. The ownership of each unit shall include ownership of a percentage of undivided interest in the common elements as assigned to a particular unit in Exhibit "D". The percentage of interest assigned to the respective units can be changed only by the<sup>4</sup> consent of all unit owners expressed in an amendment to this Declaration as hereinafter provided; except, however, that during the period of Development, this Declaration authorizes the Declarant to amend said percentages. Each undivided interest is to be conveyed with the unit to which it is assigned and is included as a part of the title to that unit. The undivided interest in the common elements cannot be separated from the unit to which it is assigned and cannot be separately conveyed or transferred, nor by itself used as security in any manner; it shall be deemed to be conveyed or transferred with the unit to which it is assigned even though not specifically referred to in the deed of conveyance or other instrument conveying or transferring title to such unit or creating a security interest therein. The common elements shall remain undivided and no right shall exist to partition said common elements, except as provided for in the Act and this Declaration, as they now exist or as they may hereafter be amended.

Section 2.06. Encroachments. If any portion of the common elements now encroaches upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the common elements, as a result of the construction of a building, or if any such encroachment shall occur hereafter as a result of settling or shifting of

any building, a valid easement for said encroachment and for the maintenance of the same shall exist so long as the building shall stand. In the event a building or any portion thereof shall be partially or totally destroyed as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and then is rebuilt, and as a result of said construction the building encroaches on any parts of the common elements, or upon any other unit, or upon any limited common elements due to such rebuilding, then there shall be created a valid easement for such encroachments and the maintenance thereof shall exist so long and the building shall stand.

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Section 2.07. General Easements. Each unit owner shall have an easement in common with the other owner or owners of the other unit or units to use all pipes, wires, cables, conduits, utility lines and other physical facilities which are common elements serving the owner's unit. Additionally, each unit shall be subject to an easement in favor of the other owner or owners for the use of such pipes, wires, cables, conduits, utility lines or other physical facilities which are common elements serving the Condominium Property. A general easement for the benefit of all owners is reserved through the Condominium Property, including the units, as may be required for installation, maintenance, repair, or replacement of pipes, wires, cables, conduits, utility lines or other physical facilities which may now or hereafter become common elements necessary to adequately serve the Condominium Property.

Section 2.08. Inspection and Maintenance. Any member of the Board, or any other person authorized by the Board, shall have the right of access to the common elements and to each unit for the purpose of inspection, maintenance, repair or replacement of any part of the Condominium Property; provided, however, that except in the case of emergency such right of access to a unit shall not be exercised without reasonable notice to the unit owner and all reasonable attempts will be made to make such entry and repairs, etc. at a reasonable and convenient time to the owner. 16

ARTICLE III

USE RESTRICTIONS

Section 3.01. Condominium Units. Each of the condominium units or units shall be occupied as a residence for a single-family, as defined in this Declaration, and is restricted to such use. For the purposes of this Declaration, the term "single-family" shall be defined as one or more persons occupying a condominium unit, who are related by blood or marriage, or in the event they are not related by blood or marriage, not more than four (4) unrelated persons shall occupy a condominium unit.

Section 3.02. Common Elements. The common elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of all the unit owners.

Section 3.03. Nuisances. No nuisance shall be allowed to occur upon the Condominium Property, nor any use or practice not

ordinarily contemplated in the uses and purposes hereinabove set forth which could reasonably cause embarrassment, discomfort or nuisance to any other resident or residents of the Condominium Property or which is in violation of any rule or regulation adopted by the Board of Directors pursuant to the provisions of this Declaration. All parts of the Condominium Property, including units and limited common elements, shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate or any fire hazard allowed to exist.

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Section 3.04. No Unlawful Use. No immoral, improper, offensive, or unlawful use shall be made of any part of the Condominium Property, and all applicable laws, zoning ordinances and regulations of all governmental bodies shall be observed. The responsibility and expense of meeting the requirements of governmental bodies which require maintenance, modification or repair of the Condominium Property shall be the same as the responsibility for maintenance and repair of the Condominium Property unless necessitated by the misuse, misconduct, neglect or specific use of the unit owner, in which case such expenses shall be assessed against such owner, and shall be payable like any other assessment provided for in this Declaration.

Section 3.05. Animals and Pets. A unit owner or occupant may keep one or more household pets, provided such pet or pets do not create a nuisance or disturb other unit owners or occupants, and provided that such owner or occupant complies with all the rules and



regulations established by the Board of Directors relating to household pets. The rules and regulations of the Board of Directors may limit the number and type of household pets kept in any unit. All such household pets shall be on a leash when outside a unit.

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Section 3.06. Exterior Antennae. No exterior television or radio antenna shall be placed on any improvements without prior written approval of the Board of Directors, except an antenna or antennas which may be constructed or attached by Declarant or the Board of Directors as part of the Condominium Property.

Section 3.07. Parking. Each occupant of a unit shall park automobiles only in the parking spaces or other areas that may be designated for such use by the Board of Directors. The Board of Directors may adopt rules and regulations regarding the parking of motor vehicles on the common elements and the prohibiting of the parking of certain types of motor vehicles and other types of vehicles on the common elements.

Section 3.08. Sale Period. Notwithstanding any provisions herein to the contrary, it shall be permissible for Declarant or its successors and assigns, during the time Declarant owns any unit, or has the option to add Additional Property to the Condominium Property, to maintain upon such portion of the Condominium Property as Declarant may deem necessary, such facilities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the sale of a unit or future units owned by Declarant,

including without limitation, a sales and/or construction offices, storage areas, signs, and model units.

Section 3.09. Signs and Business Activities. No advertising signs, billboards, unsightly objects, or nuisances shall be erected, <sup>19</sup> placed or permitted to remain on the Condominium Property. No business activities of any kind whatever shall be conducted in any building or in any portion of the Condominium Property; provided, however, the foregoing covenant shall not apply to the business activities, signs and billboards of Declarant, its agents or assigns, during the Sale Period.

Section 3.10. Garbage Cans, Mailboxes, Etc. Trash or garbage receptacles shall be located in service areas as designated by the Board of Directors. In the event that the United States Postal Service will make mail delivery to each unit, each unit owner may place a mailbox beside the front entrance of his unit; however, prior to its placement the design of such mailbox shall be approved by the Board of Directors, or its designated architectural committee, and must be compatible with the quality and design of the units and other mailboxes located thereon.

Section 3.11. Use of Common Elements. No planting or gardening shall be done by owners, and no fences, hedges or walls shall be erected or maintained upon the Condominium Property except such as are approved by the Board of Directors or its designated architectural committee. Except for the right of ingress and egress, and the limited common elements, the owners of units are

hereby prohibited and restricted from using any portion of the Condominium Property located outside of their respective units except as may be expressly provided for herein or as allowed by the<sup>20</sup> Board of Directors. It is expressly acknowledged and agreed by all owners by acceptance of a deed to a unit that this Section is for the mutual benefit of all owners in the Plantation Point Condominium and is necessary for the protection of said residents.

Section 3.12. Exterior Appearance. To provide a neat, attractive and harmonious appearance throughout the Condominium Property, no awnings, shades, screens or other item shall be attached to, hung or used on the exterior of any window or door of a unit or on the exterior of any building without the prior written consent of the Board of Directors or an architectural committee appointed by the Board of Directors. Further, no foil or other reflective material shall be used on any windows for sun screens, blinds, shades or any other purpose. All shades, drapery linings and other window treatments visible from the exterior of a unit on any window or door shall be white or off-white. Outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed or maintained on any portion of the Property, nor shall any clothing, rugs or any other item be hung on any railing or fence enclosing any deck, porch or walkway.

Section 3.13. Rules and Regulations. Rules and regulations concerning the use of common elements and limited common elements may be made and amended from time to time by the Board. Copies of

such rules and regulations shall be maintained by the Secretary of the Association and furnished to all unit owners and their mortgagees upon request. Such rules and regulations shall be binding upon<sup>21</sup> the owners, their families, visitors, guests, servants, employees, lessees, licensees, invitees, successors and assigns until and unless they are rescinded or amended in a regular or special meeting of the Association by the affirmative vote of a majority of the unit owners.

Section 3.14. Leasing of Units. Units may be leased by Unit Owners subject to the terms, covenants and restrictions of this Declaration and to the rules and regulations governing leasing established by the Board of Directors. Any lease agreement shall be required to provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration and the Bylaws of the Association and that any failure by the lessee to comply with the terms of such documents shall be an automatic default under the lease. The Association by a two-thirds vote shall have the right to establish a policy requiring that all leases be for a minimum period of time and that no lease shall be for a shorter period of time.

Section 3.15. Approval Required for Changes. To preserve the architectural appearance of the Condominium Property, no construction of any nature whatsoever shall be commenced or maintained by any owner or resident other than Declarant with respect to the exterior of any unit or any other portion of the Condominium Property, including any limited common elements appurtenant thereto,

nor shall any exterior addition to or change or alteration therein be made, unless and until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors or its designated architectural committee. The foregoing restrictions shall apply without limitation to any enclosure of an entry steps, porches or decks proposed to be made by any owner. An owner may make improvements and alterations within his unit; provided, however, that no owner shall make any structural alterations in a unit or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety, soundness or structural integrity of that unit or any other unit without first obtaining the written consent of the Board of Directors and all unit owners and mortgagees of the units affected, nor shall any unit owner impair any easement without first obtaining the written consent of the Association and of the owner or owners and their mortgagees for whose benefit such easement exists.

#### ARTICLE IV

##### MAINTENANCE

Section 4.01. Responsibility of Association. The maintenance of the common elements shall be the responsibility and a common expense of the Association. ("Maintenance" as used in this Declaration shall refer to and include all upkeep, repairs and replace-

ments). In addition to maintenance of the common elements, the Association shall, as a common expense, except as hereinafter provided, provide maintenance for the exteriors of all units, to include: paint, repair, replacement and care for roof surfaces (shingles), gutters, downspouts, and exterior surfaces of unit walls including siding attached thereto. Such exterior maintenance by the Association shall not include glass surfaces, screens, windows, lighting fixtures, mailboxes, heating or air conditioning equipment or other hardware attached to the exterior surfaces of a unit, all of which shall be the responsibility and expense of individual unit owners.

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Section 4.02. Responsibility of Owner.

(a) Maintenance of the interior of a unit shall be the responsibility and expense of the owner thereof. In addition, each unit owner shall be responsible for the maintenance of all glass surfaces of his unit and of all lighting fixtures, utility lines, pipes, wires and conduits forming a part of the heating and air-conditioning units serving a particular unit, windows, screens, mailboxes and other hardware attached to the exterior surfaces of his unit. All maintenance and replacement of such items shall be of the same type originally installed in the unit unless replacement with a different type is approved in writing by the Board of Directors of the Association or its designated architectural committee.

(b) All limited common elements shall be maintained by the Association. Should the Board of Directors determine that any owner

has failed or refused to discharge properly his obligation with respect to the maintenance required by this Section 4.02, the Association may provide such maintenance as it may deem necessary or advisable and may add the cost of such maintenance to the assessment to which such owner is subject as provided in this Article. 24

(c) In the event that the Board of Directors shall determine that the need for maintenance by the Association as provided for in this Article is caused through the willful or negligent act of an owner, his family, guests, tenants, licensees or invitees and is not covered or paid for by insurance, then the Association may at its option provide the maintenance required by this Section. The cost, both direct and indirect, of such maintenance shall be added to and become a part of the assessment to which such owner is subject; provided, however, that the Association shall have given such owner fourteen (14) days prior written notice of such default, and such owner shall not have cured such default within such grace period.

Section 4.03. Maintenance of Roads. The maintenance of the roads within the Condominium and the private roads located outside the Condominium which the Condominium Owners have the right to use, shall be the responsibility of the Association. The cost of such maintenance, repair or replacement of the private roads shall be a common expense. The Association shall have the right to enter into contracts with other users of the private roads located outside the Condominium for the replacement, repair and maintenance of such roadways. The Association's share of the cost of replacing, repairing or maintaining the private roads outside the Condominium

shall be established by dividing the total number of all condominium units and single family houses who have the legal right to use the private roads into the number of units in the Condominium, and the resulting percentage shall be the Association's percentage of the cost of the replacement, repair or maintenance charges for the private roads located outside the Condominium. The Association shall not be responsible for the cost of any new road construction outside the Condominium, but only for the repair and maintenance of existing private roads as may hereafter be constructed.

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#### ARTICLE V

##### INSURANCE AND CASUALTY LOSSES

Section 5.01. Insurance. It shall be the duty of the Board of Directors to cause the Association to obtain and maintain such policies of casualty, liability and other insurance as are required to be obtained and maintained by the Association by provisions of Section 39 of the Act and by this Declaration. The casualty insurance shall cover all of the buildings and other improvements, including personal property of the Association, including without limitation, units, limited common elements, and common elements in an amount equal to the maximum insurance replacement costs, as determined annually by the Board of Directors in accordance with reasonably acceptable appraisal practice, such insurance to include or afford protection against:

(a) Loss or damage by fire or other hazards covered by the standard extended coverage and broad form and/or special form; and



(b) Such other risks of a similar or dissimilar nature as are or shall be customarily covered with respect to buildings and other improvements similar in construction, location and use, to the buildings and other improvements of the Condominium, including without limitation, vandalism, malicious mischief, windstorm, and flood; and

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(c) Comprehensive general liability insurance in such limits as the Board of Directors may from time to time determine, insuring the Association, the Board of Directors, its agents and each unit owner for claims arising out of or in connection with the ownership, operation or maintenance of any of the Condominium Property, excluding unit owner liability coverage for claims arising in connection with that portion of the Condominium Property used and occupied exclusively by a particular owner. Such coverage shall be in an amount not less than \$1,000,000.00 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the common elements.

(d) Worker's compensation insurance to meet the requirements of law, if applicable; and

(e) Loss or damage by flood to the extent, if any, required or necessitated by law, including, without limitation, the Flood

Disaster Protection Act of 1973, or any similar laws or regulations;  
and

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(f) Personal injury liability coverage (with employee coverages), if obtainable.

Section 5.02. Certificates. A Certificate of Insurance shall be issued to each owner and his mortgagee, if any, which shall specify the proportionate amount of such insurance attributable to the particular owner's unit. In addition, the policies shall contain the standard mortgagee clause or equivalent endorsement (without contribution) which is commonly accepted by private institutional mortgagee investors in Glynn County, Georgia.

Section 5.03. Premiums. Premiums for all insurance obtained and purchased by the Association shall be paid by the Association. The cost of insurance premiums and other incidental expenses incurred by the Association in administering and carrying out the provisions of this Article, shall be assessed against and collected from the unit owners as a common expense.

Section 5.04. Policy Provisions. The Board of Directors shall be required to make every effort to secure insurance policies that will provide for the following:

(a) A waiver of subrogation by the insurer as to any claims against the Board of Directors, its duly authorized agent, the owners and their respective servants, agents, employees and guests;  
and

(b) A waiver of insurer's right to repair or reconstruct instead of paying cash; and

(c) That the policies on the Condominium Property cannot be cancelled, invalidated or suspended on account of the conduct of any director, officer or employee of the Association or its duly authorized agent without at least thirty (30) days prior written notice delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its agent, or any owner or mortgagee; and

(d) That any "other insurance" clause in the master policy excludes individual owner's policies from consideration; and

(e) The issuance is not prejudiced by any act or neglect of an individual owner which is not under the control of the Association.

Section 5.05. Assured. All policies of insurance obtained by the Association shall be for the benefit of the Association, the owners of units and their mortgages, as their interests may appear, and shall provide that all proceeds covering casualty losses shall be paid to the Association, and the proceeds from insurance against any casualty loss shall be held for the use of the Association, unit owners and their respective mortgagees, as their interest may appear, to be applied or distributed in accordance with the provisions of this Declaration and the Act. The Association is hereby constituted and appointed agent for all unit owners, with authority to negotiate and settle the value and extent of any and

all losses covered by any policy of casualty insurance, and the Association is granted full right and authority to execute, in favor of any insurer, a release of liability arising out of any occurrence covered by any policy or policies of casualty insurance and resulting in loss of or damage to the insured property.

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ARTICLE VI

DAMAGE OR DESTRUCTION

The repair, reconstruction or rebuilding of the Condominium Property following the occurrence of damage to or destruction of any portion thereof shall be governed by the following provisions:

Section 6.01. Estimates of the Cost of Repair. As soon as practicable following the occurrence of any damage to or destruction of any portion of the Condominium Property, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing or restoring such portion of the Condominium Property so damaged or destroyed to substantially the same condition as such portion of the Condominium was in prior to the occurrence of such damage or destruction, and shall proceed with the filing and adjustment of all claims arising under insurance maintained by the Association as a result of such damage or destruction.

Section 6.02. Determination to Repair, Reconstruct or Rebuild Common Elements. Any damage to or destruction of any portion of the common elements not exclusively serving any unit will be repaired, reconstructed or rebuilt unless the owners of the units to which seventy-five (75%) percent of the votes in the Association are

allocated shall determine, within thirty (30) days after the occurrence of the casualty, not to repair, reconstruct or rebuild the same. 30

Section 6.03. Determination to Repair, Reconstruct or Rebuild Units. The determination to repair, reconstruct, or rebuild any unit, and limited common elements exclusively serving such unit, which may be damaged or destroyed by fire or any other casualty shall be made in the following manner:

(a) If any unit is damaged, but is neither rendered untenable nor contained within a building which also contains another unit which is rendered untenable by such casualty, such unit, together with the common elements exclusively serving such unit, shall be repaired in all events.

(b) In the event that any unit is so damaged or destroyed that such unit is thereby rendered untenable, or, if not rendered untenable, is contained within a building which also contains another unit which is rendered untenable by such casualty, such unit, together with the limited common elements exclusively serving such unit, will be repaired, reconstructed or rebuilt unless within forty-five (45) days after the occurrence of such casualty, (i) the owner of such damaged or destroyed unit, together with (ii) the owners of all of the other units contained within the building in which such unit is located, and together with (iii) the owners of seventy-five (75%) percent of the remaining units within the

Condominium, shall all determine not to repair, reconstruct or rebuild such damaged or destroyed unit.

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(c) For purposes of this Section 6.03, a unit shall be deemed to be untenable only if as a consequence of the occurrence of a fire or other casualty, such unit has been damaged or destroyed to the extent that it is not fit for present habitation, and the estimated costs of making the repairs necessary to render such unit fit for present habitation, as determined pursuant to Section 6.01 hereof, shall exceed fifty (50%) percent of the fair market value of such unit prior to the occurrence of such fire or other casualty.

6.04. Manner of Repair, Reconstruction or Rebuilding. All repairs, reconstruction or rebuilding to be made as a consequence of the occurrence of a fire or other casualty shall be made in accordance with the following provisions:

(a) If the damage to be repaired, reconstructed or rebuilt is to the common elements, and if the proceeds of insurance maintained by the Association which are payable as a result of such damage or destruction are less than ten percent (10%) of the total revenues anticipated to be received by the Association under the then current annual budget of the Association, such repair, reconstruction or rebuilding shall be substantially in accordance with the plans and specifications for such damaged property prior to the occurrence of such damage, or in accordance with such different plans and specifications as may be approved for such purpose by the Board of Directors.

(b) If the damage to be repaired, reconstructed or rebuilt is to the common elements, and if the proceeds of insurance maintained by the Association which are payable as a result of such damage or destruction are greater than ten percent (10%) of the total revenues anticipated to be received by the Association under the then current annual budget of the Association, such repair, reconstruction or rebuilding shall be substantially in accordance with the plans and specifications for such damaged property prior to the occurrence of such damage, or in accordance with such different plans and specifications as may be approved for such purpose by the Board of Directors; provided, however, that in the event the Board of Directors shall approve plans and specifications for the repair, reconstruction or rebuilding of such damaged property which differ materially from those of the damaged property prior to the occurrence of such damage, such plans and specifications shall be submitted for the approval of the majority of the vote of the Association, if a request to such effect is submitted in writing signed by unit owners together possessing fifteen percent (15%) of the total vote of the Association no later than fourteen (14) days after the meeting at which the Board of Directors approved such differing plans and specifications.

(c) If the damage to be repaired, reconstructed or rebuilt is to any unit, such repair, reconstruction or rebuilding shall be substantially in accordance with the plans and specifications for such damaged unit prior to the occurrence of such damage, or in

accordance with such differing plans and specifications as are approved for such purpose by both the owner of the unit which is to be so repaired, reconstructed or rebuilt, and by the Board of Directors.

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(d) All of the work of repairing, reconstructing or rebuilding any portion of the Condominium Property, the damage to or destruction of which resulted in the payment of any insurance proceeds under any insurance policy maintained by the Association, shall be the responsibility of the Association, and shall be performed under the supervision of the Board of Directors. In discharging such supervisory responsibility, the Board of Directors shall be authorized, but shall not be obligated, to employ as its agent or consultant such building supervisors or architects as the Board of Directors shall determine. Any fees which shall be payable to any such building supervisor or architect as shall be employed by the Board of Directors shall be a common expense of the Association.

Section 6.05. Costs of Repair, Reconstruction or Rebuilding.

The cost of repairing, reconstructing or rebuilding any portion of the common elements or any portion of a unit which shall be damaged or destroyed shall be paid with any insurance proceeds which shall be paid to the Association on account of such damage or destruction. If such insurance proceeds, together with any amounts as may be available from any reserve funds maintained by the Association for such purposes, are not sufficient to defray such costs of repair,



reconstruction or rebuilding, then the Board of Directors shall levy a special assessment, pursuant to the provisions of Section 7.04 hereof, against all of the unit owners and the condominium units to raise the excess funds necessary to defray such costs. 34

Section 6.06. Units Not Rebuilt. In the event that it shall be determined in the manner provided in Section 6.03 hereof not to repair, reconstruct or rebuild any unit, the same shall not be repaired, reconstructed or rebuilt, and the entire undivided interest in the common elements appertaining to that unit shall thenceforth appertain to the remaining units, being allocated to them in proportion to their undivided interests in the common elements, and the remaining portion of that unit shall thenceforth be a part of the common elements. Votes in the Association and liability for future common expenses shall thereupon appertain to the remaining condominium units, being allocated to them in proportion to their relative voting strength in the Association and liability for common expenses, respectively.

Any insurance proceeds which are received by the Association on account of the casualty which damaged or destroyed any unit or units which are not to be repaired, reconstructed or rebuilt, shall be first used to pay for the costs of cleaning up and landscaping the area on which such unit or units were formerly located, as necessary in view of the fact that the same are not to be repaired, reconstructed or rebuilt, and the balance of such proceeds shall be disbursed jointly to the owner or owners of such unit or units and

their first mortgagees, such disbursement to be made according to the undivided interest in the common elements which was allocated to each such unit which is not to be repaired, reconstructed or rebuilt. The unit owner or owners of the unit or units not to be repaired, reconstructed or rebuilt shall be entitled to file an action for partition.

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## ARTICLE VII

### COMMON EXPENSES

Section 7.01. Budget. At the first meeting of the Board, and thereafter within thirty (30) days prior to the date of each annual meeting of the Association, the Board shall prepare a proposed operating budget for the maintenance and operation of the Condominium Property for the succeeding calendar year, and shall estimate the amount of common expenses to be paid for such year. The amount of common expenses so determined shall be allocated and assessed by the Board among the unit owners in proportion to their respective percentages of ownership of the common elements as specified in Exhibit "D."

Section 7.02. Common Expenses. The common expenses shall include, but not be limited to, the following:

(a) Fees and expenses of managing and administering the Association, including legal and accounting fees;

(b) Expenses of maintaining, preserving, operating, repairing or replacing the Condominium Property or any roadway serving the Condominium Property;