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STATE OF GEORGIA
COUNTY OF FULTON

DECLARATION OF CONDOMINIUM

FOR

90 FAIRLIE CONDOMINIUM

THIS DECLARATION is made on the date set forth below by 90 FAIRLIE, LLC, a Georgia limited liability company (hereinafter referred to as "Declarant");

WITNESETH

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

WHEREAS, a plat related to the Condominium prepared by Valentino & Associates, Inc., dated December 22, 1999, was filed in Condominium Plat Book 13, Page(s) 2, Fulton County, Georgia Records; and

WHEREAS, floor plans relating to the Condominium prepared by Rowhouse Architects, Inc. were filed in Condominium ~~File Cabinet No. 3~~, ~~Folder No. ___~~, of the Fulton County, Georgia Records; and
Floor Plan Book Pages 12-28

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

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

DECLARATION OF CONDOMINIUM

FOR

90 FAIRLIE CONDOMINIUM

1. NAME.

The name of the condominium is 90 Fairlie Condominium (hereinafter sometimes called "90 Fairlie" or the "Condominium," as further defined herein), which condominium is a residential condominium which hereby submits to the Georgia Condominium Act, O.C.G.A. §44-3-70, et seq. (Michie 1982).

2. DEFINITIONS.

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

(a) Act shall mean the Georgia Condominium Act, O.C.G.A. §44-3-70, et seq. (Michie 1982), as such act may be amended from time to time.

(b) Additional Property shall mean that property described on Exhibit "C" attached hereto and incorporated herein which may be submitted to the Condominium as provided in this Declaration.

(c) Architectural Control Committee or ACC shall mean the committee established to exercise the architectural review powers set forth in Paragraph 13 hereof.

(d) Area of Common Responsibility shall mean and refer 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 or entity become the responsibility of the Association.

(e) Articles or Articles of Incorporation shall mean the Articles of Incorporation of 90 Fairlie Condominium Association, Inc., which have been filed with the Secretary of State of the State of Georgia.

(f) Association shall mean 90 Fairlie Condominium Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

(g) Board or Board of Directors shall mean the elected body responsible for management and operation of the Association.

(h) Business Unit shall mean any Unit located on the second floor of the Condominium and shown on the Floor Plans and Exhibit "B" marked as BU and followed by a number to distinguish between Business Units, which may be used for either residential or business office type uses as set forth more particularly in Paragraph 14 of this Declaration.

(i) Bylaws shall mean the Bylaws of 90 Fairlie Condominium Association, Inc., attached to this Declaration as Exhibit "E" and incorporated herein by this reference.



(j) Commercial Unit shall mean any space located on the basement or first floor of the Condominium and shown on the Floor Plans marked as CU and followed by a number to distinguish between Commercial Units, which may be used for commercial purposes as set forth more particularly in Paragraph 14 of this Declaration.

(k) Common Elements shall 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.

(l) Common Expenses shall 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, including the Limited Common Elements and for making rental payments due pursuant to the Parking Lease.

(m) Community-Wide Standard shall mean 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.

(n) Condominium shall mean 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.

(o) Condominium Instruments shall mean this Declaration and all exhibits to this Declaration, including the Bylaws of the Association, and the plats and plans, all as may be supplemented or amended from time to time.

(p) Declarant shall mean 90 Fairlie, LLC, a Georgia limited liability company, its respective successors and assigns.

(q) Eligible Mortgage Holder shall mean those holders of first mortgages secured by Units in the Condominium who have requested notice of certain items as set forth in this Declaration.

(r) Facade Easement shall mean the Deed of Gift and Agreement for an Architectural, Facade and Preservation Easement between 90 Fairlie, LLC, a Georgia limited liability company and Easements Atlanta, Inc., a Georgia non-profit corporation, dated, ~~and~~ December 30, 1999, recorded December 30th, 1999, in Deed Book 28267, Page 299, Fulton County, Georgia records.

(s) Floor Plans shall mean the floor plans for 90 Fairlie Condominium, filed in the condominium file cabinet of the Fulton County, Georgia records.

(t) Limited Common Elements shall 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.

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

(v) Mortgage shall refer to 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.

(w) Mortgagee or Mortgage Holder shall mean the holder of any mortgage.

(x) Occupant shall mean any Person occupying all or any portion of a Unit for any period of time, regardless of whether such Person is a tenant or the Owner of such property.

(y) Owner shall mean the record title holder of a Unit within the Condominium, but shall not include a Person who is only a Mortgage Holder.

(z) Parking Area shall mean that basement parking area for the use of Owners and Occupants in the Condominium as set forth in subparagraph 14(i) of this Declaration.

(aa) Parking Lease shall mean the lease defined in subparagraph 14(i) of this Declaration for the leasing of parking spaces for the Condominium.

(bb) Person shall mean any individual, corporation, firm, association, partnership, trust, or other legal entity.

(cc) Residential Unit shall mean all Units except for Commercial Units or Business Units as defined above.

(dd) Survey shall mean the plat of survey for 90 Fairlie Condominium, filed in the condominium plat book of the Fulton County, Georgia records.

(ee) Unit shall mean 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 78, of the 14th District of Fulton County, Georgia, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. The Survey and Floor Plans relating to the Condominium will be filed in the Fulton County, Georgia records as each Unit is submitted to this Declaration. The Survey and Floor Plans are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

The Condominium consists of a 9-story building with a basement and a roof deck.

So long as Declarant owns a Unit, Declarant reserves the right, but shall have no obligation, to make improvements and changes to all or part of the Common Elements and the Units owned by Declarant (other than changes to the location of Unit boundaries unless expressly permitted herein), including, without limitation, realignment of parking spaces in the Parking Area as permitted by the Parking Lease, renovation and installation of changes to utility systems and facilities, rearrangement and installation of security and refuse facilities, work relating to building exteriors, and extension of the drives and utility lines and pipes located on the Condominium.

4. UNITS AND BOUNDARIES.

The Condominium will be divided into eighteen (18) Residential Units, three (3) Business Units, the Limited Common Elements, the Common Elements, and one (1) Commercial Unit. Each Unit consists of a dwelling and its appurtenant percentage of undivided interest in the Common Element. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the Act and the Condominium Instruments. The Units are depicted on the Survey and the Floor Plans. Each Unit includes



(b) The Association's Board of Directors, 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. An amendment to assign a Common Element, not previously assigned as a Limited Common Element shall not require the approval of the Association or the Board, if the request is made by the Declarant, or its affiliate. Such a request made by any other Person shall require the Board's consent.

(c) For so long as Declarant owns any Unit primarily for the purpose of sale, Declarant shall have the right to sell to Unit Owners one (1) or more storage spaces to be assigned as Limited Common Elements pursuant to subparagraphs (a) and (b) above. The proceeds of the sale of storage spaces as Limited Common Elements shall belong to the Declarant.

7. ASSOCIATION MEMBERSHIP AND ALLOCATION OF VOTES.

All Unit Owners, by virtue of their ownership of a fee or undivided fee interest in any Unit in the Condominium, excluding Persons holding such interest under a Mortgage, are members of the 90 Fairlie Condominium Association, Inc., and, except as otherwise provided herein or in the Bylaws, shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to the Declaration and in accordance with the Bylaws. Subject to the provisions of the Condominium Instruments, each Owner shall be entitled to one (1) equally weighted vote for each Unit in which he or she holds the interest required for membership.

8. ALLOCATION OF LIABILITY FOR COMMON EXPENSES.

(a) Except as provided below, or elsewhere in the Act or Condominium Instruments, the amount of all Common Expenses shall be assessed against all the Units in accordance with the percentage of undivided interest in the Common Elements appurtenant to the Unit as shown on Exhibit "B."

(b) The Board of Directors shall have the power to assess specially 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 exercise its authority under this Paragraph 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 with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Paragraph.

(i) Notwithstanding anything contained herein to the contrary, any Common Expenses which are incurred through or occasioned by the use or enjoyment of any Common Elements which benefits or is intended to benefit less than all the Units, shall not be assessed against all the Units pursuant to this Paragraph 8, but shall be specifically assessed equitably among those Units which are so benefitted or intended to be benefitted. Specifically, without limitation, this Declaration provides in Paragraph 4 that certain Common Elements in the Condominium are assigned to Residential Units and Business Units and certain Common Expenses do not benefit Commercial Units. Therefore, certain Common Expenses shall not be assessed against

Commercial Units. Commercial Units shall be assessed for the following Common Expenses only: exterior electricity, sanitation fees, wood infestation treatment and bond, management fees, miscellaneous administrative fees, bank charges, insurance premiums, legal and accounting fees, and repairs to the exterior of the building and reserves that apply to such repairs. All of such fees shall be assessed against all Units, Residential Units and Commercial Units, on an equal basis. In addition, the rent payments under the Parking Lease to be made either to the Declarant or the Association, as applicable, shall be specially assessed among the benefitted Units according to the benefit received, at an equal rate per parking space.

(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 specially assessed against such Unit or Units.

9. ASSOCIATION RIGHTS AND RESTRICTIONS.

In addition to and not in limitation of all other rights it may have, the Association, acting through its Board of Directors, shall have the following rights and authority.

(a) The Association shall have the right 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.

(b) The Association can make and enforce reasonable rules and regulations governing the use of the Condominium, including the Units, Limited Common Elements, Common Elements, and use of the parking spaces pursuant to the terms of the Parking Lease in the event the Parking Lease is assigned to the Association.

(c) The Association can enforce use restrictions, other Declaration and Bylaws provisions, and rules and regulations by the imposition of reasonable monetary fines and suspension of use and voting privileges as provided in Section 44-3-76 of the Act, as amended.

(d) The Association shall have the right to grant permits, licenses, utility easements, and other easements.

(e) The Association shall have the right to control, manage, operate, maintain, improve and replace all portions of the Area of Common Responsibility.

(f) The Association shall have the right to deal with the Condominium in the event of damage or destruction as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of the Act and this Declaration.

(g) The Association shall have the right to acquire, hold, and dispose of tangible and intangible personal property and real property.

(h) The Declarant or the Association, whichever is the tenant under the Parking Lease, shall have the right to assign one (1) or more parking spaces in the Parking Area to a Unit for the term of the Parking Lease for the exclusive use of the Owner and Occupants of the Unit. The Declarant or the Association, as applicable, shall keep records of the assignment of such parking spaces and the parking spaces may be reassigned upon written application to the Declarant or the Association, as applicable, signed

by the Unit Owner or Owners to whom the parking space is then assigned and by the Owner or Owners to whom the parking space is to be reassigned.

(i) The Association shall have the right 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. Notwithstanding the above, the Owners may re-open closed Common Elements by a majority vote of the total Association vote, cast at a duly called special or annual meeting.

(j) The Association shall have the right to establish a construction deposit 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 for repair of such damage may be deductible from the construction deposit and any additional expenses may be specifically assessed against the Unit under subparagraph 8(b)(ii) above.

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; (ii) special assessments, such assessments to be established and collected as hereinafter provided; and (iii) specific assessments against any particular Unit which are established pursuant to the terms of this Declaration, including but not limited to reasonable fines imposed in accordance with the terms of this Declaration.

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

Assessments shall be paid in such manner and on such dates as may be fixed by the Board 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 himself 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 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.

covering the estimated costs of operating the Condominium during the coming year. The Board shall cause the budget and notice of the assessments to be levied against each Unit for the following year to be delivered to each member at least thirty (30) days prior to the Association's annual meeting. The budget and the assessment shall become effective unless disapproved at a duly called and constituted annual meeting of the Association by a vote of a majority of the total Association vote; 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. In such case, the Board may propose a new budget at any time during the year at a special meeting of the Association. The proposed 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.

Enforcement under this subparagraph is not dependent upon or related to other restrictions and/or other actions.

(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. Any special assessment (except as provided in Paragraph 8(b) regarding the power to assess specially pursuant to Section 44-3-80(b) of the Act and Paragraph 12(b) herein, regarding repair or reconstruction of casualty damage to or destruction of all or part of the Condominium) which would cause the average total of special assessments levied in one fiscal year to exceed two hundred (\$200.00) dollars per Unit, shall be approved by a majority of the total Association vote prior to becoming effective.

(f) Capital Budget and Contribution. The Board of Directors shall annually prepare a capital budget which 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 set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within the budget and assessment as provided in subparagraph (d) of this Paragraph. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

Notwithstanding any other provisions of this Declaration, during the time the Declarant appoints the directors and officers of the Association pursuant to Article III, Section 2 of the Bylaws, Declarant (i) may collect a non-refundable contribution to the capital fund of the Association from the initial purchaser of each Unit in the amount of two (2) months of the general assessments, and (ii) shall not be required to prepare a capital budget, set any other capital contribution, or otherwise collect amounts for capital reserves. Any capital contribution collected by the Declarant shall not be collected against a Mortgagee which takes title to a Unit pursuant to foreclosure.

(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 a Unit. The Association shall respond in writing within five (5) days of receipt of the request for a statement; provided, however, the Association

may require the payment of a fee, not exceeding ten (\$10.00) dollars, 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.

(h) Surplus Funds and Common Profits. Pursuant to Section 44-3-108 of 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, either be distributed to the Owners or credited to the next assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Unit, or added to the Association's reserve account.

11. 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: (a) fixtures, improvements and alterations that are a part of the building or structure; and (b) appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping. If such insurance is not reasonably available, 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 right to obtain additional coverage at his or her own expense.

All insurance coverage for the Association shall be written in the name of the Association as trustee for itself, each of the 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 property. If "all risk" coverage is not reasonably available at reasonable cost, the Board shall obtain, at a minimum, fire and extended coverage, including coverage for vandalism and malicious mischief, in like amounts. The Board shall use reasonable efforts to obtain policies that will provide the following:

- (i) the insurer waives its rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners, Occupants, and their respective household members;
- (ii) any "other insurance" clause contained in the master policy shall expressly exclude individual Unit Owners' policies from its operation;
- (iii) until the expiration of thirty (30) days after the insurer gives notice in writing to the 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;
- (iv) the master policy may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days prior notice in writing to the Board of Directors and all Mortgagees of Units;
- (v) an agreed value endorsement and an inflation guard endorsement; and
- (vi) the deductible amount per occurrence for coverage required by the Act shall not exceed one thousand (\$1,000.00) dollars.
- (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. Any Unit Owner who obtains an individual insurance policy covering any portion of the Condominium, other than improvements and betterments made by such Owner at his or her expense and personal property belonging to such Owner, shall file a copy of such individual policy or policies with the Board of Directors within thirty (30) days after the purchase of such insurance. Such Owner shall also promptly notify, in writing, the Board of Directors in the event such policy is canceled.
- (e) In addition to the insurance required hereinabove, the Board shall obtain as a Common Expense:
- (i) worker's compensation insurance if and to the extent necessary to meet the requirements of law;
- (ii) public liability insurance in amounts no less than required by 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 consonant with the best business judgment of the Board of Directors, but in no event less than three (3) month's assessments plus a reasonable amount to

cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage 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 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.

(f) Insurance carried by the Association as a Common Expense shall not be required to include any part of a Unit which is not depicted on the original plats and plans or included in the original mortgage, nor shall the Association include public liability insurance for individual Owners for liability arising within the Unit.

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

12. 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 (80%) percent 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 institutional 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 which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

(b) Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board of Directors, or if at any time during the reconstruction and repair or upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the additional costs shall be assessed against the Owners of the Unit(s) damaged in proportion to the damage to the Units or against all Owners, in the case of insufficient funds to cover damage to the Common Elements. This assessment shall not be considered a special assessment as discussed in Paragraph 10(e). If after repair and reconstruction is completed there is a surplus of funds, such funds shall be common funds of the Association to be used as directed by the Board of Directors.

(c) Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Condominium was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board 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 which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the 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.

13. ARCHITECTURAL CONTROLS.

(a) During Declarant Control. During the time in which the Declarant has the right to appoint directors and officers of the Association under Article III, Section 2 of the Bylaws there shall be no Architectural Control Committee and all encroachments onto the Common Elements or Limited Common Elements, exterior change, alteration or construction (including painting and landscaping), and any erection, placement or posting of any object, sign, antenna, clothesline, light, flag, or thing on the exterior or roof of the building, in any windows (except window treatments as provided herein), or on any Limited Common

The Board, subject to this subparagraph (a), may allow such encroachments on the Common Elements and Limited Common Elements as it deems acceptable.

In the event that the ACC fails to approve or to disapprove such application within forty-five (45) days after the application and all information as the ACC may reasonably require have been submitted, its approval will not be required and this subparagraph (a) will be deemed complied with; 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.

(ii) 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. 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.

(iii) Limitation of Liability. Review and approval of any application pursuant to this Paragraph is made on the basis of aesthetic considerations only, and neither the Declarant, the Board of Directors or the ACC shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, the ACC, or member of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

(iv) No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board of Directors and ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of 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 be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

(v) Enforcement. Any construction, alteration, or other work done in violation of this Paragraph shall be deemed to be nonconforming. Upon written request from the Board or the ACC, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Board or its designees shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorney's fees, may be assessed against the benefitted Unit and collected as an assessment pursuant to this Declaration.

In addition to the foregoing, the Board of Directors shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Paragraph and its decisions.

If any Owner or Occupant makes any exterior change, alteration, or construction (including landscaping) upon the Common Elements or Limited Common Elements in violation of this

Paragraph, he or she does so at his or her sole risk and expense. The Board may require that the change, alteration or construction 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.

(vi) Improvements to Roof Terraces. All improvements to roof terraces assigned to such Units as Limited Common Elements shall be commenced and constructed only after the following conditions are met:

(A) Written approval from the ACC and Declarant (if required as set forth above) is received by the Unit Owner, which written approval may be provided subject to any design guidelines and standards set forth by the ACC;

(B) All construction shall be carried out in compliance with the laws, codes, rules, regulations and orders of all applicable governmental agencies and authorities.

(C) Construction of all improvements to roof terraces shall be completed on or before ninety (90) days from the date of commencement of construction.

(D) Any construction on a roof terrace shall be at the risk of the Owners of the Unit to which the roof terrace is assigned as a Limited Common Element and the Owner shall be responsible for damage to any other Unit or portion of the Condominium including, without limitation, the underlying roof and any repairs shall be made in accordance with Paragraph 17.

(E) The construction, maintenance, or use of roof improvements shall not damage or interfere in any way with the Units, or other portions of the Condominium building.

(F) The construction, maintenance, or use of improvements on rooftop areas shall not damage or interfere in any way with utility pipes or lines, HVAC units, or vents located on the roof of the Condominium building.

(G) No improvements constructed on the roof terraces shall exceed ten (10) feet in height.

(c) All requests and approvals under this paragraph must meet all covenants and requirements of the Facade Easement.

14. USE RESTRICTIONS.

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

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

- (i) Alterations to the Interiors of the Units. If any Owner acquires an adjoining Unit, such Owner shall have the right (subject to the prior written approval of the Mortgagees of the Units involved) to remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may, in whole or part, be part of the Common Elements, so long as no portion of any load bearing wall or column is materially weakened or removed and no portion of any Common Elements is damaged, destroyed or endangered, other than that partition and any chutes, flues, ducts, conduits, wires or other apparatus contained therein which shall be relocated by such Owner if such facilities serve any other part of the Condominium. The alterations permitted by this subparagraph shall not be deemed an alteration or relocation of boundaries between adjoining Units.
- (ii) Relocation of Boundaries. Boundaries between Commercial Units and Business Units may be relocated only in accordance with the provisions of O.C.G.A. §44-3-91 and, for so long as Declarant owns a Unit, only with the prior written consent of the Declarant. Boundaries between Residential Units not owned by the Declarant or its affiliates shall not be relocated. Residential Units not owned by the Declarant or its affiliates shall not be subdivided. The Declarant shall have the right to relocate boundaries between Units owned by the Declarant or its affiliates without the approval of the Association, and the Association shall execute the required amendment to the Declaration.
- (iii) Subdivision of Units. An Owner may subdivide a Commercial Unit or a Business Unit only in accordance with the provisions of Section 44-3-92 of the Act and this Declaration and, for so long as Declarant owns a Unit, only with the prior written consent of the Declarant. Residential Units not owned by the Declarant or its affiliates shall not be subdivided. The Declarant shall have the right to subdivide Units owned by the Declarant or its affiliates without the approval of the Association, and the Association shall execute the required amendment to the Declaration.
- (c) Outbuildings. No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected by any Owner or Occupant on any portion of the Condominium, other than by Declarant, at any time, either temporarily or permanently, without the written approval of the Board.
- (d) Use of Common Elements Including Roof Deck. There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on or removed from any part of the Common Elements without the prior written consent of the Board, as specifically provided herein. This prohibition shall not apply to the Declarant. Owners and Occupants of Commercial Units or invitees of Owners and Occupants of Commercial Units shall be prohibited from using the roof deck unless they obtain the prior consent of the Board.
- (e) Use of Limited Common Elements. Use of the Limited Common Elements is restricted exclusively to the Owners of the Unit to which such Limited Common Elements are assigned, and said Owner's family members, guests, tenants and invitees. The Limited Common Elements are reserved for exclusive use, but shall not be construed or interpreted to be separate and apart from the Common Elements in general, and the restrictions applicable to the Common Elements shall also apply to the Limited Common Elements.
- (f) Prohibition of Damage, Nuisance and Noise. Without 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

(i) Parking. Parking for Residential Units and Business Units in the Condominium is provided on the basement level of the parking garage located at 101-107 Cone Street, N.E., Atlanta, Fulton County, Georgia ("Parking Area") pursuant to a Basement Area Parking Lease originally between Frances Wood Wilson Foundation, Inc. (assigned to James Arogeti) ("Landlord"), Manuel Chavez (assigned to 90 Fairlie, LLC) ("Tenant"), and Chapman Realty Company ("Agent"), dated March 2, 1981, for a term of fifty (50) years beginning on December 1, 1981 and ending November 30, 2031, as amended and assigned ("Parking Lease"). The Parking Lease has been assigned to Declarant by Assignment and Assumption Agreement, dated June 9, 1998 and the Declarant may, but shall not be required to, assign the Parking Lease to the Association. In the event that consent is obtained from the Landlord and Declarant decides to assign the Parking Lease to the Association such an assignment shall be accepted by the Association.

Vehicles must be parked in designated lined, parking spaces only. Each Residential Unit and Business Unit shall initially be assigned at least one (1) parking space to be assigned by the Declarant, unless the Parking Lease is assigned to the Association, in which event parking spaces shall be assigned by the Association pursuant to rules and regulations it adopts. Such assigned spaces may only be used by the Owner or Occupants to whom the spaces are assigned, and their guests and families. Commercial Units will not be assigned parking spaces.

Disabled vehicles are prohibited from being parked in the Parking Area. Boats, boat and other trailers, and recreational vehicles (RV's and motor homes) are prohibited from being parked in the Parking Area. For purposes of this subparagraph, a vehicle shall be considered "disabled" if it does not have a current license tag or is obviously inoperable.

If any vehicle is parked on any portion of the Parking Area in violation of this subparagraph (i) or in violation of the Association's rules and regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity which will do the towing 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 vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's parking space, is obstructing the flow of traffic, is parked in a space which has been assigned as exclusively serving another Unit, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for any claim of damage as a result of the towing 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.

(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. The Board of Directors may fine any Owner or Occupant and/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

(r) Carpeting of Tile or Hardwood Floors. In order to minimize noise in the Condominium for the benefit and quiet enjoyment of all Owners and Occupants all rooms within a Residential Unit or a Business Unit that are tile, marble, vinyl, hardwood, concrete, or other hard surfaced material must have at least forty percent (40%) of the floor of each such room covered with padded carpeting or padded rugs.

(s) Abandoned Personal Property. Personal property, other than vehicles as provided for in subparagraph (i) shall not be 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 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 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.

(t) Sale Period. Notwithstanding any provisions contained in this Declaration to the contrary, during the period of the sale of the Condominium Units it shall be expressly permissible for Declarant, its contractors, agents, employees, assigns and representatives, to maintain and carry on, upon such portion of the Property as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the completion and sale of the Condominium Units, including, but without limitation, business offices, signs, model Units and sales offices. The right to maintain and carry on such facilities and activities shall include specifically the right to use the parking facilities for the Condominium for such purposes and to use the Units owned by Declarant as model Units and as offices for the sale of the Condominium Units and related activities.

15. LEASING.

In order to protect the equity of the individual Unit Owners at 90 Fairlie, to carry out the purpose for which the Condominium was formed by preserving the character of the Condominium as a homogenous residential community of predominantly owner-occupied homes and by preventing the Condominium from assuming the character of a renter-occupied apartment complex, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially owner-occupied, leasing of Units shall be governed by the restrictions imposed by this Paragraph. **Except as provided herein, the leasing of Residential Units shall be prohibited.**

(a) Definitions.

(i) Leasing shall mean the regular, exclusive occupancy of a Residential Unit by any person(s) other than the Owner, for which the Owner receives any consideration or benefit including, but not limited to, a fee, service, gratuity or emolument. For purposes hereof, occupancy by a roommate of an Owner Occupant shall not constitute leasing.



with the Declaration and any rules and regulations adopted pursuant thereto.

(ii) General. Residential Units may be leased only in their entirety; no fraction or portion may be leased without prior written Board approval. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form which is deemed acceptable. There shall be no subleasing of Residential Units or assignment of leases without prior written Board approval. All leases must be for an initial term of not less than one (1) year, except with written Board approval, which shall not be unreasonably withheld in cases of undue hardship. Within ten (10) days after executing a lease agreement for the lease of a Residential Unit, the Owner shall provide the Board with a copy of the lease and the name of the lessee and all other people occupying the Residential Unit. The Owner must provide the lessee copies of the Declaration, Bylaws, and the rules and regulations. Nothing herein shall be construed as giving the Association the right to approve or disapprove a proposed lessee; the Board's approval or disapproval shall be limited to the form of the proposed lease.

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

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

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Owner 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. If the Association proceeds to evict the lessee, any costs, including attorney's fees and court costs, associated with the eviction shall be an assessment and lien against the Residential Unit.

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

(d) Measures Related to Insurance Coverage.

(i) The Board of Directors, upon resolution, shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Condominium which are the maintenance responsibility of the Unit Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Condominium, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring Owners to install smoke detectors, requiring Owners to make improvements to the Owner's Unit, and such other measures as the Board may reasonably require so long as the cost of such work does not exceed three hundred (\$300.00) dollars per Unit in any twelve (12) month period.

(ii) In addition to, and not in limitation of, any other rights the Association may have, if any Unit Owner does not comply with any requirement made by the Board of Directors pursuant to subparagraph (d)(i) above, the Association, upon fifteen (15) days' written notice (during which period the Unit Owner may perform the required act or work without further liability), may perform such required act or work at the Unit Owner's sole cost. Such cost shall be an assessment and a lien against the Unit as provided herein. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to subparagraph (d)(i) of this Paragraph, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

18. PARTY WALLS.

(a) 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.

(b) 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.

(c) 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 benefitted by the wall may restore it, and the other Owner or Owners thereafter who are benefitted by the wall 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.

(d) 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.

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

(e) Notwithstanding anything to the contrary herein contained, the provisions of Paragraphs 15 and 16 governing sales and leases shall not apply to impair the right of any first Mortgagee to:

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

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

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

20. 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 safety 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 shall have no duty to provide security on the Condominium. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide such security shall lie solely with each Unit Owner. Neither Declarant nor the Association shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken.

(b) 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) nor more than twenty-one (21) days from the date of receipt of the request.

(c) Right of Action. Each Owner hereby acknowledges and agrees that the Association shall not be entitled to institute or provide financial assistance for any legal or administrative action against anyone on behalf of any or all of the Unit Owners which is based on any alleged defect in any Unit or the Common Elements, or any damage allegedly sustained by any Unit Owner by reason thereof, but rather, that all such actions shall be instituted by the Unit owners owning such Units or served by such Common Elements or allegedly sustaining such damage.

(d) Use and Conveyance of Commercial Units by Declarant to Association.

(i) Declarant may, but is not required to, give the Unit Owners the right to use a Commercial Unit. The duration, terms, and conditions of such usage are at the discretion of the Declarant and may be unilaterally changed by Declarant from time to time. If Unit Owners and/or Association are given the right by Declarant to use any Commercial Unit owned by Declarant, then the Association shall be responsible for paying for insurance, property taxes, and the cost of maintaining and repairing such Commercial Unit.

(ii) The Declarant may, but shall not be obligated to, transfer or convey to the Association a Commercial Unit. Any such conveyance shall be accepted by the Association, and the Commercial Unit shall thereafter be maintained by the Association. Declarant shall not be required to make any improvements whatsoever to the Commercial Unit to be conveyed and accepted pursuant to this subparagraph.

(d) Roof Deck. At such time, if any, as the Additional Property is developed, Declarant shall have the right to relocate and rebuild the roof terraces assigned to individual Units and roof deck on the top floor of the Additional Property at a location to be determined in the sole discretion of the Declarant and at Declarant's expense. The size, location, and other features of such new roof terraces and roof deck shall be within the sole discretion of Declarant.

(e) Storage Spaces. Neither the Declarant nor the Association shall be held liable for loss or damage to any property placed or kept in a storage space in the Condominium. Each Owner or Occupant with use of a storage space who places or keeps property in such storage space does so at his or her own risk.

(f) Parking. All amounts due to the Landlord under the Parking Lease shall be paid by the Association to the Declarant, or in the event of assignment of the Parking Lease to the Association, to the Landlord by the ten (10th) day of each month. In the event that the Association fails to make the rent payment by the due date then the first such time each calendar year that the payment is late Declarant shall give the Association notice of such failure in the manner provided in Article VI, Section 1 of the Bylaws and ten (10) days to make such payment. If the rental payment is not paid within ten (10) days from the date notice is given or in any calendar year the rent payment is late more than one time, then Declarant shall have the right by giving written notice to the Association in the manner set forth in Article VI, Section 1 of the Bylaws to terminate the Unit Owners' rights to use the parking spaces under the Parking Lease.

21. EMINENT DOMAIN.

In the event of a taking by condemnation or by eminent domain, the provisions of the Act shall prevail and govern; provided, however, that any proceeds received for a taking of the Common Elements (other than Limited Common Elements) by condemnation or eminent domain shall, at the option of the Board, 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 institutional holder of a first Mortgage shall be entitled to written notice of any such condemnation proceedings, and nothing in the Condominium Instruments shall be construed to give a priority to any Unit Owner in the distribution of proceeds to such Unit.

22. EASEMENTS.

(a) Use and Enjoyment. Each Unit Owner and Occupant shall have a right and 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

completion, renovation, improvement, development or sale of the Unit; (2) a transferable easement on, over, through, under and across the Common Elements and Limited Common Elements for the purpose of making improvements to the Condominium or any portion thereof, for the purpose of installing, replacing, repairing and maintaining all utilities serving the Condominium, and for the purpose of doing all things reasonably necessary and proper in connection therewith; and (3) an easement for doing all things necessary to connect the Condominium at a level above the basement level with the adjacent parking deck located at 101-107 Cone Street, a portion of which is subject to the Parking Lease, in the event the Declarant is able to obtain required permits and permission of the owner of the parking deck. Declarant shall not be charged any fees or costs for the exercise of these easement rights.

(iii) Easements in Favor of the Additional Property Owner. There is reserved to Declarant and its successors and assigns, including any purchaser of the Additional Property, an easement upon, across, above and under all property within the Condominium (including the Common Elements and Limited Common Elements) for developing the Additional Property whether or not it is developed as part of the Condominium. In accordance therewith and until such time as Declarant or its successors record an amendment to the Declaration effecting the submission of the Additional Property (which is not required), then it shall be expressly permissible for Declarant and its successors and assigns to maintain and carry on, upon such portion of the Condominium as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient or incidental to Declarant's development, construction and sales activities related to developing the Additional Property whether or not it is developed as part of the Condominium including, but without limitation, the following:

(a) the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Condominium;

(b) the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Condominium;

(c) the right to carry on sales and promotional activities in the community and the right to construct and operate business offices, signs, construction trailers, residences, model Units, and sales offices. Declarant may use residences, offices or other Units owned or used by Declarant as model Units and sales offices.

(iv) Exercise of Easement Rights. Rights exercised pursuant to these reserved easements shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the person causing the damage at his or her sole expense. This paragraph shall not be amended without the Declarant's or Declarant's successor's and assign's express written consent. Declarant shall not be charged any fees or costs for the exercise of these easement rights.

(g) Facade Easement. The Condominium is subject to all the terms of the Facade Easement, including, without limitation, all architectural modifications or additions. The Association shall comply with all maintenance, repair, or other obligations required by the terms of the Facade Easement.

(h) Access to Business Units. Primary access to the Business Units shall be through the stairs and stairwell located at the intersection of Poplar Street and the ramp into the parking deck. The lobby and

Handwritten notes:
A large 'X' mark.
A bracket on the right side of the page, spanning from the (iii) section down to the (g) section, with the handwritten text "All Related to (iii)".

IN WITNESS WHEREOF, Declarant has executed this Declaration this 23rd day of December, 1999.

DECLARANT: 90 FAIRLIE, LLC,
a Georgia Limited Liability Company

Signed, sealed, and delivered
this 23 day of December, 1999
in the presence of:

By: Skelton Development, L.L.C.,
a Georgia Limited Liability Company,
its Manager

Phillip E. Mariner
Witness

By: Richard H. Skelton (SEAL)
Richard H. Skelton, its Manager

C. Scott Jay
Notary Public
[NOTARY SEAL]

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EXHIBIT "C"

ADDITIONAL PROPERTY

All that area located in Land Lot 78 of the 14th Land District, City of Atlanta, located between mean sea level elevation 1169.0 feet at the lowest elevation and mean sea level elevation 1232.0 feet at the highest elevation, also described as the proposed 10th, 11th, 12th, 13th, 14th, and 15th floor above the existing building at 90 Fairlie Street, said air space being more particularly described as follows:

To find the Point of Beginning commence at a chiseled "X" found in concrete at the intersection of the northerly right-of-way line of Poplar Street (30 ft. r/w) and the westerly right-of-way of Fairlie Street (30 ft. r/w),

THENCE North 78 degrees 06 minutes 28 seconds East for a distance of 0.08 feet to the southwest corner of an existing nine story building (address 90 Fairlie Street), at a ground elevation of 1052.0 feet.

THENCE in a vertical direction along the southwest corner of said building to elevation 1169.0 feet at the top of an existing parapet wall, said parapet wall being the highest outside edge of the existing building at elevation 1169.0 feet, said corner of the parapet wall being the starting point at elevation 1169.0 feet.

THENCE the following courses and distances along the existing outer edge of the parapet wall at elevation 1169.0 feet.

North 36 degrees 46 minutes 29 seconds West for a distance of 59.71 feet to a point.

THENCE North 53 degrees 11 minutes 42 seconds East for a distance of 18.96 feet to a point.

THENCE South 35 degrees 30 minutes 45 seconds East for a distance of 8.82 feet to a point.

THENCE North 53 degrees 00 minutes 52 seconds East for a distance of 36.28 feet to a point.

THENCE North 35 degrees 30 minutes 45 seconds West for a distance of 5.80 feet to a point.

THENCE North 53 degrees 03 minutes 30 seconds East for a distance of 18.12 feet to a point.

THENCE South 37 degrees 14 minutes 19 seconds East for a distance of 5.79 feet to a point.

EXHIBIT "C" (Continued)
Additional Property

THENCE North 53 degrees 03 minutes 30 seconds East for a distance of 26.72 feet to a point.

THENCE South 36 degrees 33 minutes 17 seconds East for a distance of 51.03 feet to a point.

THENCE South 53 degrees 08 minutes 40 seconds West for a distance of 99.87 feet to a point at the corner of a parapet wall at elevation 1169.0 feet, said point being the starting point at elevation 1169.0 feet.

THENCE from said starting point at elevation 1169.0 feet continuing vertically along a plumb line and along the extension of the southwest corner of the existing building to a point at elevation 1232.0 feet; said point being the proposed top outer edge of the southwest corner of the fourteenth floor at elevation 1232.0 feet, said point also being the starting point at elevation 1232.0 feet.

THENCE the following courses and distances along the proposed top outer edge of the fourteenth floor at elevation 1232.0 feet.

North 36 degrees 46 minutes 29 seconds West for a distance of 59.71 feet to a point.

THENCE North 53 degrees 11 minutes 42 seconds East for a distance of 18.96 feet to a point.

THENCE South 35 degrees 30 minutes 45 seconds East for a distance of 8.82 feet to a point.

THENCE North 53 degrees 00 minutes 52 seconds East for a distance of 36.28 feet to a point.

THENCE North 35 degrees 30 minutes 45 seconds West for a distance of 5.80 feet to a point.

THENCE North 53 degrees 03 minutes 30 seconds East for a distance of 18.12 feet to a point.

THENCE South 37 degrees 14 minutes 19 seconds East for a distance of 5.79 feet to a point.

THENCE North 53 degrees 03 minutes 30 seconds East for a distance of 26.72 feet to a point.

THENCE South 36 degrees 33 minutes 17 seconds East for a distance of 51.03 feet to a point.

THENCE South 53 degrees 08 minutes 40 seconds West for a distance of 99.87 feet to a point, said point being the proposed top outer edge of the southwest corner of the fourteenth floor, also being the starting point at elevation 1232.0 feet.

Said air space area containing 337,932 cubic feet, and is also shown on the drawing attached as Exhibit "C-1".

