

RECEIVED FOR RECORD  
2007 SEP 14 PM 4:50

DANIEL W. MASSEY  
CLERK  
SUPERIOR COURT, C.C.G.A.

Return Recorded Document to:  
Mark T. Shawe  
Weiner, Shearouse, Weitz,  
Greenberg and Shawe, LLP  
14 E. State Street  
Savannah, Georgia 31401  
File No.: 11299.0002.7

DECLARATION OF CONDOMINIUM

101-103 West Gordon

A Condominium

Declarant: RDGM Enterprises, LLC  
Savannah, Chatham County, Georgia

TABLE OF CONTENTS

<u>Article</u>	<u>Page</u>
Introduction.....	1
Declaration.....	2
1.    Definitions.....	2
2.    Description of the Building.....	7
3.    Description of the Units.....	7
4.    Unit Boundaries.....	8
5.    Limited and General Common Areas.....	9
6.    Shares of Common Elements and Liability for Common Expenses.....	10
7.    Maintenance and Alteration of Units.....	11
8.    Maintenance and Alteration of Common Elements.....	13
9.    Procedures Regarding Common Expense.....	13
10.   Lien for Assessments.....	18
11.   The Association and Voting Rights.....	19
12.   Insurance.....	20

TABLE OF CONTENTS

<u>Article</u>	<u>Page</u>
13. Insurance Proceeds.....	27
14. When Damaged Property Is To Be Reconstructed or Repaired.....	28
15. Responsibilities and Procedures As To Payment For Repairs.....	29
16. Use Restrictions.....	30
17. Notice of Lien or Judgment.....	38
18. Declaration Preparation.....	38
19. Compliance and Default.....	38
20. Rights of Mortgage Holders.....	39
21. Control of the Association.....	41
22. Amendments.....	41
23. Severability.....	42
24. Miscellaneous.....	42
25. Separate Real Estate Taxes.....	47
26. Security & Safety.....	47
27. Convertible Space.....	48

S:\3RD FLOOR\MTS\CORPORATE\101-103 West Garden CONDOMINIUM ASSOC., INC\DECLARATION OF CONDOMINIUM.DOC

DECLARATION OF CONDOMINIUM

101-103 West Gordon  
A Condominium  
Savannah, Chatham County, Georgia

DECLARANT: RDGM ENTERPRISES, LLC

Declaration made this 14th day of September, 2007 by RDGM ENTERPRISES, LLC, whose mailing address is 31 West Congress Street, Savannah, Chatham County, Georgia hereinafter called the "Owner" or "Declarant", for itself, its successors, grantees and assigns.

WHEREAS, Owner owns certain improved real property all in Savannah, Chatham County, Georgia, and being more particularly described in Exhibit "A", attached hereto and incorporated herein and made a part hereof by reference thereto; and

WHEREAS, Owner now desires to submit said property to the provisions of the "Georgia Condominium Act", Georgia, Laws, (Acts 1975, pp. 609, Et Seq.), codified under Title 44, Chapter 3, Section 70, et seq. of the Official Code of Georgia Annotated, 1981, all as may be amended from time to time (hereinafter referred to as "The Condominium Act" or "Act"); and,

WHEREAS, Owner desires to provide for the subdivision of the Submitted Property into six (6) Condominium Units inclusive of the "Convertible Space" as hereinafter defined and identified which will allow Declarant to create and define an additional Unit and such further limited or general common elements from such convertible space as Declarant may deem appropriate in its discretion as authorized by law and as hereinafter provided.

NOW, THEREFORE, Owner, in accordance with the Georgia Condominium Act, as amended from time to time, does hereby make the following declaration:

DECLARATION

Owner hereby publishes and makes the following declaration as to the divisions, covenants, restrictions, conditions, limitations and uses to which the submitted property and improvements now situated thereon and hereinafter constructed, specifying that this Declaration shall constitute covenants to run with the land, binding upon Owner, their successors, grantees, and assigns, and all subsequent Owners of any part of the property or improvements, their lessees, grantees, heirs, executors, administrators, representatives, devisees, successors, and assigns, and does hereby establish and submit the Property described on Exhibit "A" (attached hereto and incorporated herein and made a part hereof) to the provisions of the Georgia Condominium Act (including any amendments thereto), and after the recording of this Declaration said property shall be held and sold subject to the provisions of said Act and the terms and conditions hereinafter set forth in this Declaration, said property hereinafter sometimes referred to as the "Submitted Property".

The name of the Condominium shall be "101-103 West Gordon, A Condominium", the same being located in Savannah, Chatham County, Georgia.

ARTICLE 1. DEFINITIONS

Except as provided herein, the definitions set forth in the Georgia Condominium Act shall apply to this Declaration and all other Condominium documents. In addition to the definitions

contained in said Act, the following definitions shall apply to this Declaration and all other Condominium documents covering the Submitted Property described on Exhibit "A", (attached hereto and by reference incorporated herein and made a part hereof), and shall apply to any further subdivision of the Submitted Property hereinafter submitted under the terms hereof.

(a) "Additional subdivision" shall mean with regard to any portion of the property described in Exhibit "A" which is originally designated as one Unit hereunder, the construction of more than one Unit within the boundaries of the original Unit in accordance with the provisions of the Condominium Act and this Declaration.

(b) "Association" shall mean "101-103 West Gordon Condominium Association, Inc.", a Georgia non-profit corporation formed for the purpose of exercising the powers of the Association of this Condominium. See Exhibits "C" and "D" for the Articles and Bylaws.

(c) "Board of Directors" or "Board" shall mean the Board of Directors of "101-103 West Gordon Condominium Association, Inc."

(d) "Building" shall mean the composite of all Units, common areas and limited common areas comprising the structure.

(e) "Common Elements" shall mean all portions of the Condominium other than the Units, and shall include the common areas and facilities as defined in the Act, this Declaration, Association By-Laws, and all amendments to such.

(f) "Common Expenses" shall mean all expenditures lawfully made or incurred by or on behalf of 101-103 West Gordon Condominium Association, Inc., together with all funds lawfully assessed for the creation and/or maintenance of reserves pursuant to the provisions of the Act, this Declaration, Association By-

Laws, and all amendments to such.

(g) "Common Profits" shall mean all income collected or accrued by or on behalf of 101-103 West Gordon Condominium Association, Inc., other than income derived from assessments pursuant to Section 44-3-80 of the Official Code of Georgia Annotated or as provided by this Declaration, Association By-Laws, and all amendments to such.

(h) "Condominium" shall mean that form of Ownership established by the provisions of the Act and includes all property lawfully submitted to the Act.

(i) "Condominium Documents" or "Condominium Instruments" shall mean this Declaration, the Articles of Incorporation of 101-103 West Gordon Condominium Association, Inc., the By-Laws of 101-103 West Gordon Condominium Association, Inc. and all other exhibits referenced or attached to any of such, and all other documents, rules, and regulations promulgated pursuant to the authority created herein and by the Act, all as said documents or instruments shall be amended from time to time. Any amendment or certification of any Condominium instrument shall, from the time of the recordation of such amendment or certification, be deemed an integral part of the affected Condominium instrument or document, so long as such amendment or certification was made in accordance with the provisions of the Act and this Declaration.

(j) "Condominium Unit" shall mean a Unit together with the undivided interest in the common elements appertaining to that Unit.

(k) "Convertible Space" means a portion of a structure within a condominium, which portion may be converted in accordance with this article into one or more units or common

elements, including, but not limited to, limited common elements.

(l) "Declaration" shall mean this document or instrument as recorded, including any lawful amendments thereto.

(m) "Foreclosure", shall include, without limitation, the exercise of a power of sale contained in any security deed, trust deed, deed to secure debt or other instrument conveying security title to the Condominium Unit, or the judicial foreclosure of such.

(n) "101-103 West Gordon Condominium Association, Inc." shall mean a nonprofit corporation organized under the laws of the State of Georgia, whose members shall be Condominium Unit Owners, and which Condominium Unit Owners will automatically become members of the Association upon becoming such Owner. 101-103 West Gordon Condominium Association, Inc. is hereinafter sometimes referred to as "Association".

(o) "Identifying Number" shall mean one or more letters, numbers, symbols or words, or any combination thereof, that identifies only one Unit in the Condominium.

(p) "Lease" shall include all leases, sub-leases and rental contracts, whether oral or written.

(q) "Limited Common Element" shall mean the portion of the common elements reserved for the exclusive use of those entitled to the use of one or more (but less than all) of the Units. Various Limited Common Elements are described with more particularity in Article 5 of this instrument.

(r) "Majority", except where otherwise provided by the Act, this Declaration, the Articles of Incorporation of 101-103 West Gordon Condominium Association, Inc. or the By-Laws thereof, shall mean the number of Condominium Unit Owners or their



proxies, entitled to cast fifty-one (51%) percent or more of the total votes of said Association in accordance with the voting rights as determined by the Act, this Declaration, the Association By-Laws, and all amendments thereto.

(s) "Mortgage" shall mean a mortgage, deed to secure debt, debt deed, trust deed, or other instrument conveying a lien upon or security title to the Condominium Unit.

(t) "Mortgagee" shall include any grantee or holder of a deed to secure debt, debt deed or other instrument conveying security title to a Condominium Unit.

(u) "Person" shall mean a natural person, corporation, partnership, association, trust or other entity, or any combination thereof.

(v) "Plans" and "Plat" shall mean the plans and plat of the Building, Units, Submitted Property referred to in the Act, which plans and plat are more particularly designated and described on Exhibit "B", incorporated herein, and by reference made a part hereof. Said plans and plat are filed of record in the office of the Clerk of the Superior Court of Chatham County, Georgia.

(w) "Submitted Property" shall mean the property lawfully submitted to the provisions of the Act by the recording of Condominium instruments pursuant to the provisions of the Act and this Declaration, said property being more particularly described on Exhibit "A" attached hereto and by reference incorporated herein and made a part hereof. Further subdivision shall be deemed to be submitted property upon the alteration of the number of Condominium Units pursuant to the provisions of the Act and this Declaration.

(x) "Unit" shall mean a portion of the Condominium intended for any type of independent Ownership and use. For purposes of the Declaration and the By-Laws of the Association, a convertible space shall be treated as and deemed as a Unit with respect to its obligation to bear a proportionate share of expenses, etc.. under Article 6, and for other purposes consistent with maintenance, repair, insurability, reconstruction, voting rights and the like consistent with Unit Ownership under this Declaration.

(y) "Unit Owner" shall mean one or more persons, including the Declarant, who own a Condominium Unit.

#### ARTICLE 2. DESCRIPTION OF THE BUILDING

The property as a whole consists of two (2) buildings located on portions of Lot 23, Chatham Ward in Savannah, Georgia. The buildings and land are situated on the Southwest corner of Gordon and Whitaker Streets.

For a complete description of the Building reference is hereby made to the Condominium Plat and Plans of 101-103 West Gordon, A Condominium, recorded in Condominium Plans Book 2-C, Pages 419, 420 A-F in the Office of the Clerk of the Superior Court of Chatham County, Georgia.

#### ARTICLE 3. DESCRIPTION OF THE UNITS

There are presently intended to be five (5) Units in the main building of the Condominium designated as Units 103 and 101B on the first (garden) floor and Unit 101A on the parlor level floor. Units 103A and 103B occupy both the second and third floors of the main building. There is a carriage house structure on the lot and such structure shall constitute "convertible space" as defined in this Declaration and subject to Declarant's

express rights and reservations to create a Unit and such limited and general common elements from that convertible space as Declarant chooses in the exercise of its discretion. All Units are restricted to residential use only, subject to the use restrictions of section 16 of this Declaration. Greater detail as to the exact dimensions of the Units are contained in the Master Plat and Plans of 101-103 West Gordon, A Condominium, recorded in the Office of the Clerk of the Superior Court of Chatham County, Georgia, in Condominium Plans Book 2C, Pages 419, 420 A-F. The Condominium is not expandable beyond six (6) total units once the convertible space has been converted to a defined unit and any elements created therefrom, nor may any Unit be subdivided.

#### ARTICLE 4. UNIT BOUNDARIES

The boundaries of each Unit shall be determined in the following manner:

(a) The upper boundary shall be the plane of the lower surfaces of the structural floor joists of the Unit above or roof joist as the case may be.

(b) The lower boundary shall be the plane of the upper surface of the floor joists, cement or slab as the case may be.

(c) The vertical boundaries of the Unit shall be (1) the interior plane of the exterior structure of the exterior walls (including the interior surface of the exterior windows and doors) of the building, and (2) the interior surface of the walls between the Units and all limited and general common areas.

(d) The boundaries of each are more accurately shown and described on the Master Plan of 101-103 West Gordon, A Condominium, recorded in the Office of the Clerk of the Superior Court of Chatham County, Georgia, at Condominium Plans Book

2-C, Pages 419, 420A-F, (the "Master Plat") which is made a part hereof.

ARTICLE 5. LIMITED AND GENERAL COMMON AREAS

(a) Limited Common Elements: The term Limited Common Elements and Limited Common Areas shall be interchangeable and of the same meaning in this Declaration and any other Condominium documents prepared and executed in connection herewith. The types of Limited Common Elements are designated within the Condominium and shown on the plans. All such Limited Common Elements are hereby declared subject to easements of access and entry as may be required by the Georgia Fire & Safety Code, and as otherwise provided in this Declaration or is otherwise necessary or convenient in order to facilitate the service, repair, replacement and ordinary maintenance of the General Common Elements or any utility or amenity located within or running through the General or Limited Common Elements. They are:

(i) Limited Common Elements -

Balconies/Porches/Stairlandings. The exterior balconies, porches and stairlandings as designated on the Master Plans, shall constitute a Limited Common Element of the respective Units to which they are adjacent or serve. As such, said balconies, porches and stairlandings shall be reserved for the exclusive use of the Owners of the Units so situated and their guests, invitees and licensees. To the extent such Limited Common Element is adjacent to or serves more than one Unit, it is subject to the non-exclusive use of the Unit Owners, Guest and Invitees of the Units so served. The cleanliness and orderliness of the balconies, porches and stairlandings so designated as Limited Common Elements shall be maintained by the Unit Owner to which

such Limited Common Element is adjacent. Only a limited amount of exterior furniture (e.g. patio furniture) may be kept on a porch or balcony. Furniture that is designed for interior spaces (e.g. upholstered chairs, sofas) are not to be placed on porches, balconies and stairlandings. Only a limited amount of potted plants are permitted. No storage of items shall be permitted on porches and balconies. No hanging or drying of clothes on the exterior of a Unit is permitted. The Association shall have the authority to enforce maintenance of such elements by the Unit Owner. The Association shall be responsible for structural repair and replacements in the ordinary course (and not as a result of the negligence of a Unit Owner. The Association shall have an easement over, across, and under such elements as necessary to effectuate maintenance not performed by the Unit Owner.

(b) General Common Elements: The general common elements shall consist of the land, and all improvements located thereon (except the Units and the Limited Common Elements now existing or hereafter defined from the convertible space) plumbing pipes (excluding fixtures) and pumps, electrical wires (except those to each Unit for which separate meters are installed), gas lines, extensions and supportive walls, and roof.

ARTICLE 6. SHARES OF COMMON ELEMENTS  
AND LIABILITY FOR COMMON EXPENSES

Each Unit Owner shall own a proportionate share in the common areas and in any common profits and reserves of the Condominium and shall be liable for a proportionate share of

common expenses of the Condominium as follows:

<u>Unit #</u>	<u>Percentage Share</u>
101B	12.2%
103	12.2%
101A	20.8%
103A	21.6%
103B	20.8%
Convertible Space	12.4%

ARTICLE 7. MAINTENANCE AND ALTERATION OF UNITS

(a) The Association shall maintain, repair and replace:

(1) All portions of a Unit contributing to the support of the Condominium building, (except interior surfaces) which portions shall include, but not be limited to, the outside walls and roof of the Condominium building and all fixtures on the exterior thereof except that any exterior air conditioning compressor or heating Unit on the exterior shall be the responsibility of the Unit Owner whose Unit such equipment serves; boundary walls of Units; floor and ceiling slabs; and load-bearing columns and load-bearing walls; and

(2) All conduits, ducts, plumbing, wiring, and other facilities for the furnishing of utility services which are contained in the portions of a Unit maintained by the Association; and all such facilities contained within a Unit which service part or parts of the Condominium other than the Unit within which contained. All incidental damages caused to a Unit by such work shall be promptly repaired at the expense of the Association.

(b) The responsibility of the Unit Owner shall be:

(1) To maintain, repair, or replace at the Unit Owner's expense all portions of his Unit or limited common areas appurtenant to his Unit, including, by way of illustration and not limitation, all window glass, and all exterior doors which open into a Unit. Should the Unit Owner not maintain such surfaces, the Association will make the necessary repairs and charge the Unit Owner.

(2) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of the Condominium building, including windows or doors without the express written consent of the Association;

(3) To report promptly to the Association any defect or need for repairs the responsibility for which is that of the Association.

(c) Except as elsewhere reserved to the Declarant, neither the Unit Owner nor the Association shall make any alteration in the portions of a Unit or Condominium building which are to be maintained by the Association, or remove any portion thereof, or make any additions thereto, or do anything which would jeopardize the safety or soundness of the Condominium building, or impair any easement without first obtaining approval in writing of the Owners of all Units in which such work is to be done and the approval of the Board of Directors of the Association. A copy of plans for all of such work prepared by an architect licensed to practice in this state shall be filed with the Association and approval thereof by the Association obtained prior to commencement of the work.

ARTICLE 8. MAINTENANCE AND ALTERATION OF COMMON ELEMENTS

(a) The maintenance and operation of the common areas shall be the responsibility and at the expense of the Association.

(b) There shall be no alteration or improvement of the property constituting the common areas without prior approval in writing by the Owners of not less than 51% of the common areas except as provided by the By-Laws, but any such alteration or improvement shall not interfere with the rights of any Unit Owner. The cost of such work shall be assessed against each Unit, including any Unit owned by one who acquires title as a result of owning a mortgage upon such Unit, irrespective of whether such Owner approves the alteration or improvements, and this shall be so whether the title is acquired by deed from the mortgagor or through foreclosure proceedings. There shall be no change in the shares and rights of a Unit Owner in the common areas which are altered or further improved, whether or not the Unit Owner contributes to the cost thereof.

ARTICLE 9. PROCEDURES REGARDING COMMON EXPENSE

(a) Budget. At the first meeting of the Board of Directors, and thereafter at least thirty (30) days prior to the date of each annual meeting of the Association, the Board of Directors shall prepare a budget for the maintenance and operation of the Condominium for the next succeeding period January 1 through December 31 (the "Assessment Year") and shall estimate the amount of common expenses to be paid for such period. The amount of common expenses so determined shall be allocated and assessed by the Board of Directors among the Unit Owners in proportion to the respective shares of common expenses as set forth in Article 6 of this Declaration.



(b) Common Expenses. In addition to any common expenses set forth in the Act, or elsewhere in this Declaration, common expenses shall include, but not be limited to, the following:

- (i) Fees and expenses of managing and administering the Association;
- (ii) Expenses of landscaping and maintenance of common areas, roadways, lighting, signs and recreational facilities;
- (iii) Expenses of utility services for the common elements, including water, trash, gas, electricity and sewer;
- (iv) The cost of all insurance premiums on all policies of insurance, including insurance for the common areas obtained by the Association pursuant to the Act or this Declaration;
- (v) The cost of exterior maintenance to paint, repair, replace and care for roofs, gutters, downspouts, common element porches, the exterior of all limited common elements, and exterior building surfaces of all Units including pesticide treatment thereof, but not to include exterior maintenance of glass surfaces, window screens, air conditioning systems and lighting fixtures attached to Units each of which is the sole responsibility of Unit Owners (The Association will be

responsible for HVAC systems and equipment which exclusively service common areas.);

(vi) Amounts determined by the Board of Directors to be reasonably required for such reserve fund or funds as the Board of Directors may, but shall not be required to, establish or maintain and for deficiencies arising from unpaid assessments;

(vii) Special assessments as hereinafter provided, notice of which shall be furnished to each Unit Owner in the same manner as is provided for the budget; and

(viii) Fees for services rendered under contracts with any third parties for miscellaneous maintenance services.

(c) Assessment. The Board of Directors shall promptly advise each Unit Owner in writing of the estimated annual amount of common expenses payable by the Unit Owner as so determined by the Board of Directors and shall furnish each Unit Owner with a copy of the budget on which such estimate is based and, upon request, shall furnish a copy of such budget to the mortgagees of such Unit. If said estimated amount proves inadequate for any such year for any reason, including non-payment of any Unit Owner's assessment, the Board of Directors may, at any time, levy a special assessment to cure said inadequacy.

The assessments provided for in this Article shall be established on the Assessment Year basis unless and until the Board of Directors elects to establish a different and/or more frequent assessment period. The assessment obligation shall commence as to each Unit at such time as there is a transfer of the Unit by sale and it is consummated and closed. The first year's assessment for each Unit shall be adjusted according to the number of days remaining in the Assessment Year after the date of such issuance and shall be paid by the Unit Owner to the Association in equal monthly installments on the first day of each month.

(d) Liabilities for Common Expenses. In addition to the allocations for shares of liability for the normal common expenses as provided in Section 80 of the Act and in Section (b) of this Article:

(i) Any expenditures by the Association benefiting fewer than all of the Units shall be specially assessed equitably among all of the Condominium Units so benefited;

(ii) Any expenditures by the Association occasioned by the conduct of fewer than all of those entitled to occupy all of the Units or by the licensees or invitees of any such Unit or Units shall be specially assessed against the Condominium Unit or Units, the conduct of any occupant, licensee, or invitee of which occasioned any such common

expenses;

- (iii) Any expenditures by the Association which benefit all of the Units, but which significantly benefit some Units more than others, shall be assessed equitably among all of the Condominium Units on the basis of value of such benefit.

(e) Special Assessments for Reconstruction or Replacement. In addition to the assessments provided for above, the Board of Directors may levy special assessments for the purpose of paying, in whole or in part, the cost of construction of any reconstruction or replacement of any existing improvement within the common elements, including the cost of any fixtures or personal property relating thereto; provided that such assessment shall have been approved by at least two-thirds of the Board of Directors.

(f) Special Assessments for Capital Improvements. In addition to the assessments provided for above, the Board of Directors may levy special assessments for the purpose of paying, in whole or in part, the cost of construction of any new improvement or new amenity within the common elements, including the cost of any fixtures or personal property relating thereto; provided that the construction of such new improvement or new amenity shall have been approved by members of the Association holding at least two-thirds of the votes of the Association at a meeting duly called for this purpose, written notice of which shall have been given in the manner specified in the By-Laws of the Association. The assessment for such new improvement or new

amenity shall be specially assessed equitably among the Condominium Units, the Owners of which desire to participate in the use and enjoyment of such new improvement or new amenity.

(g) Duty of Association to Enforce Collection. The Board of Directors shall take prompt action to collect any assessment due from any Unit Owner. The Board of Directors shall have the right and duty to attempt to recover such unpaid assessments, together with interest and charges thereon as provided in the Act and in this Declaration.

#### ARTICLE 10. LIEN FOR ASSESSMENTS

(a) Non-Payment of Assessment. Any assessment made in compliance with the provisions of this Declaration shall constitute a lien in favor of the Association against the Units and may be enforced as provided in Section 109 of the Act or as provided by any other law.

(b) Late Charges, Interest and Costs. With respect to the lien for assessments provided in Section 109 of the Act in favor of the Association against any Unit Owner or Condominium Unit, said lien may, at the option of the Board of Directors, also include:

- (1) a late or delinquency charge (not in excess of the greater of \$10.00 or 10% of the amount of each assessment or installment thereof not paid when due);
- (ii) interest on each assessment or installment thereof, and any delinquency or late charge appertaining thereto, from the date the same was first due and payable, at the rate of 10% per annum;

- (iii) the costs of collection, including court cost, the expenses of sale, any expenses required for the protection and preservation of the Unit and reasonable attorney's fees actually incurred; and
- (iv) the fair rental value of the Condominium Unit from the time of the institution of suit until the sale of the Condominium Unit at foreclosure (or until the judgment rendered in such suit is otherwise satisfied).

(c) Notice of Mortgagee. Provided that a Unit Owner shall have given notice to the Association of a mortgage against his Unit (or such notice has been given to the Association by the mortgagee), the Association shall give notice of delinquency in payment of assessments or of lien to such mortgagee if requested in writing by it.

(d) Fee for Lien Certificate. Payment of a fee to the Association in the amount of \$10.00 shall be required as a prerequisite to the issuance by the Association of the notice provided in Section (c) of this Article and/or any statement required by the Act.

#### ARTICLE 11. THE ASSOCIATION AND VOTING RIGHTS

The operation of the Condominium shall be by 101-103 West Gordon Condominium Association, Inc., herein called the Association, a corporation not for profit under the laws of Georgia, which shall be organized and shall fulfill its functions pursuant to the following provisions:

- (a) The members of the Association shall be the Unit Owners.

The Declarant shall be a member of the association for any unsold or retained Units.

(b) Each Unit Owner has an undivided interest in the Common Areas, liability for common expenses and shall be a member of the Association with one vote therein per Unit.

(c) The Association has been incorporated in accordance with the Georgia Nonprofit Corporation Code and an initial set of By-Laws approved.

(d) Notwithstanding the duty of the Association to maintain and repair parts of the Condominium property, the Association shall not be liable for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, nor for injury or damage caused by the elements or other Owners or persons.

(e) The share of a member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his Unit.

#### ARTICLE 12. 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. 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, security or housekeeping. In the alternative, the Association's insurance policy may exclude improvements and betterments made by the Unit

Owner and may exclude the finished surfaces of perimeter and partition walls, floors, and ceilings within the Units (i.e., paint, wallpaper, paneling, other wall covering, tile, carpet and any floor covering. Unless specified or otherwise directed by this Declaration, the By-Laws or the Act, the Board of Directors of the Association shall make the election from year to year as to the type and extent of coverage of the policy of insurance.

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. 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 or employees, 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 ten thousand dollars (\$10,000.00).

(b) All policies of insurance shall be written with a company licensed to do business in the State of Georgia or in compliance with the Georgia Surplus Lines Insurance Law O.C.G.A. Chapter 33-5. All policies of insurance must carry a Best's rating of B+V1 or better. 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 being 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 consistent 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 (2) members of the Board of Directors must sign any checks written on the reserve account; and

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

(f) Insurance carried by the Association as a Common Expense shall not be required to include; (1) any part of a Unit which is not depicted on the original Plat and Plans; or (2) any part of a Unit that was not included as a part of the collateral for the initial loan made for the initial purchase of the Unit, nor shall the Association include public liability insurance for individual Owners for liability arising within the Unit

(g) Nothing contained herein gives any Owner or other party a priority over any rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Unit on which there is a Mortgagee endorsement shall be disbursed jointly to such Unit Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee.

(h) Every Unit Owner shall be obligated to obtain and maintain at all times insurance covering those portions of his or her Unit to the extent not insured by policies maintained by the Association. Upon request by the Board, the Unit Owner shall furnish a copy of such insurance policy or policies to the Association. 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.

(i) Insurance Deductibles. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one (1) Unit or a Unit and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected Owner's portion of the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Unit Owner shall be responsible for paying the deductible pertaining to his or her Unit, if any 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 this Declaration; provided, however, where the deductible is for insurance required under the Act, no Owner shall be assigned more than ten thousand dollars (\$10,000.00), or such higher amount as authorized by the Act, as the cost of the deductible for any one occurrence.

(j) Payment of Claims to Delinquent Owners. Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is delinquent in the payment of assessments owed to the Association, then the Association may retain and apply such proceeds to the delinquency. Any surplus

remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Unit Owner.

ARTICLE 13. INSURANCE PROCEEDS

(a) All insurance policies purchased by the Association shall provide that proceeds covering property losses shall be paid to the Association.

(b) The duty of the Association shall be to receive such proceeds as are paid and to hold them in trust for the benefit of the Unit Owners and their mortgagees as follows: An undivided share of such proceeds on account of damage to common areas shall be allocated to the Unit Owners according to their shares of the common areas set forth in Article 6. Proceeds on account of Units shall be held for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Association. In the event a mortgagee endorsement has been issued as to a Unit, the share of the Unit Owner shall be held in trust for the mortgagee and the Unit Owner as their interests may appear.

(c) Proceeds of insurance policies received by the Association shall be distributed as follows:

(1) All expenses of the Association shall be first paid.

(2) If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be expended as provided in paragraph 14. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

(3) If it is determined as provided in paragraph 14 that the damage for which the proceeds are paid shall not be reconstructed or repaired, or if there are excess proceeds remaining after a reconstruction and repair, the remaining proceeds shall be distributed to the beneficial Owners, remittances to Unit Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

ARTICLE 14. WHEN DAMAGED PROPERTY  
IS TO BE RECONSTRUCTED OR REPAIRED

(a) If common areas are damaged, they shall be reconstructed or repaired, unless it is determined under '44-3-98 of the Georgia Condominium Act that the Condominium shall be terminated.

(b) If the damaged property is the Condominium building, and if Units to which 50% or more of the common elements are appurtenant are found by the Board of Directors of the Association to be tenantable, the damaged property shall be reconstructed or repaired unless within 60 days after the casualty it is determined under the Georgia Condominium Act that the Condominium shall be terminated.

(c) If the damaged property is the Condominium building, and if Units to which more than 50% of the common areas are appurtenant are found by the Board of Directors to be not tenantable, the damaged property shall not be reconstructed or repaired and the Condominium shall be terminated under the Georgia Condominium Act unless within 60 days after the casualty the Owners of at least 65% of the common areas agree in writing to such reconstruction or repair.

(d) Any reconstruction or repair must be substantially in accordance with the plans of the original building, if not, then according to plans and specifications approved by the Board of Directors of the Association, and if the damaged property is the Condominium building, by the Owners of not less than 65% of the common areas, including the Owners of all damaged Units, which approval shall not be unreasonably withheld.

ARTICLE 15. RESPONSIBILITIES AND  
PROCEDURES TO PAYMENT FOR REPAIRS

(a) If damage occurs only to those parts of one Unit for which the responsibility of maintenance and repair is that of the Owner, then the Owner shall be responsible for reconstruction and repair after casualty. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the Association.

(b) Immediately after a casualty causing damage to property for which the association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair so as to place the damaged property in condition as good as that before the casualty.

(c) If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association, assessments shall be made against the Unit Owners who own the damaged property and against all Unit Owners in the case of damage to common areas, in sufficient amounts to provide funds to pay the estimated costs. Additional assessments may be made at any time during, or following the completion of, construction. Such assessments on account of damage to common



areas shall be in proportion to the Unit Owner's share in the common areas.

(d) Whatever the amount of the estimated costs of reconstruction and repairs for which the Association is responsible, the sums, paid upon assessments to meet such costs shall be deposited with the Association and the Association shall hold such sums paid and disburse them in payment of the costs of reconstruction and repair.

(e) The proceeds from assessments and insurance received by the Association shall be disbursed as follows:

(1) The portion of insurance proceeds representing damage, the reconstruction and repair of which is the responsibility of the Owner, shall be paid by the Association to the Unit Owner or, if there is a mortgagee endorsement, then to the Unit Owner and the mortgagee jointly, who may use such proceeds as they may be advised.

(2) The portion of insurance proceeds representing damage, the reconstruction and repair of which is the responsibility of the Association, shall be disbursed in payment of the costs of such repair and reconstruction in the manner required by the Board of Directors of the Association.

#### ARTICLE 16. USE RESTRICTIONS

The use of the property of the Condominium shall be in accordance with the following provisions:

(a) All Units shall be utilized only for residential purposes. All other uses must be approved by an 80% vote of the Board of Directors of the Association. No trade or business of any kind may be conducted in or from a residential Unit, including business uses ancillary to a primary residential use,

except that the Owner or occupant residing in the residence in a residential Unit may conduct such ancillary business activities within the residence so long as (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from the exterior of the residence; (b) the business activity does not involve persons (including, but not limited to, clients, customers, employees, advisors, accountants, supervisors, secretaries or receptionists) coming onto the property who do not reside in the property or door-to-door solicitation of residents of the property (other than deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services); (c) the business activity conforms to all zoning requirements for the property; (d) the business activity does not increase the insurance premium paid by the association or otherwise negatively affect the ability of the association to obtain insurance coverage; (e) the business activity is consistent with the residential character of the property and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents on the property, as may be determined in the sole discretion of the Board of Directors; (f) there are no signs, advertisements or plaques of any nature whatsoever visible from the exterior of the residence; and (g) the business activity does not result in a materially greater use of common property facilities or association services. The terms "business" and "trade" shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons

other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether (i) the activity is engaged in full or part time; (ii) the activity is intended to or does generate a profit; or (iii) a license is required for the activity. Notwithstanding the above, the use of a Unit by an on-site management company operating on behalf of the association shall not be considered a trade or business within the meaning of the paragraph.

(b) The common areas shall be used only for the purpose for which they are intended for the use and occupancy of the Units.

(c) No use or practice shall be permitted in, on or about the Condominium property which is the source of annoyance to Unit Owners or which interferes with the peaceful possession and proper use of the property by its Owners. No renovations, restoration or construction work shall be carried on within a Unit except between the hours of 8:00 a.m. and 6:00 p.m. on Monday through Saturday (none on Sundays). All parts of the property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage allowed to accumulate nor any fire hazard allowed to exist. No Unit Owner shall permit any use of his Unit or of the common areas which will increase the rate of insurance charged to insure the Condominium property without the consent of the Association. All valid laws, zoning ordinances, and regulations of all governmental bodies which require maintenance, modification, or repair of the Condominium property shall be the same as the responsibility for the maintenance and repair of the property concerned.

(d) Whether or not the Declarant has sold all of the Units, neither the Unit Owners nor the Association nor the use of the

Condominium property shall interfere with the completion of the contemplated improvements by the Declarant or any Unit purchaser. The Declarant may make such use of the unsold Units and common areas as may facilitate such completion and sale, including but not limited to, the maintenance of a sales office, the showing of the property, and the display of signs.

(e) Reasonable regulations concerning the use of the Condominium property may be made and amended from time to time by the Association in the manner provided by its Articles of Incorporation and By-Laws. Copies of such regulations and amendments thereto shall be furnished by the Association to all Unit Owners upon request. The following regulations are hereby declared to be a part of any future regulations promulgated by the Board of Directors:

(f) Obstruction of Common Elements. There shall be no obstruction of the common elements nor shall anything be stored in the common elements without the prior written consent of the Board of Directors.

(g) Exterior Decorations. Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls or doors of any portion of the Condominium, and no sign, awning, canopy, shutter, satellite dish, or radio or television antenna shall be affixed to or placed upon the exterior walls or doors, roof, patios, or balconies, or any part thereof, or exposed on or at any window, without the prior written consent of the Board of Directors.

(h) Advertising Signs. All "For Sale", "For Rent", or "For Lease" signs placed by any Unit Owner on any part of the Condominium or in any Unit therein will conform to such

regulations which specify size, shape, color and placement as may be adopted by the Board of Directors, but in no event will any sign be larger than eighteen (18") inches by twenty-four (24") inches. No other window displays or advertising shall be maintained or permitted on any part of the Condominium or in any Unit therein. Provided, however, that Declarant and its duly authorized agents, representatives and employees shall have the right to maintain advertising and for sale signs on the Property so long as Declarant owns any Condominium Unit for the purpose of sale.

(i) Garbage Containers. No garbage cans shall be placed in the common elements or limited common elements, except as may be of a design and at a location approved by the Board of Directors.

(j) Approval Required for Changes. No construction of any nature whatsoever shall be commenced or maintained upon the common elements of the Condominium, nor shall there be any change, modification, or alteration in any manner whatsoever of any surface or facade of a Unit exterior, including the color, unless and until approved by the Board of Directors.

(k) Common Elements Use. No planting or gardening shall be done and no decorative objects or hangings shall be installed or walls shall be erected or maintained within the common elements except as the Board of Directors, in its sole discretion, may deem appropriate. No sidewalks, doorsteps, entrances and passageways shall be obstructed, encumbered, or used other than for ingress and egress to and from Units. These restrictions are for the mutual benefit, safety and protection of all Owners and Unit residents and visitors.

The Board of Directors shall be empowered to enforce compliance with the provisions of the Condominium instruments and any rules and regulations adopted under this Section. Pursuant to the Georgia Condominium Act, the Board of Directors shall have the authority to impose reasonable fines for violations and for each failure to comply with said rules or with any Condominium instruments, and to suspend temporarily the right to use certain of the common elements.

Subject to the provisions of this Declaration, all occupants of Units and their guests shall have a nonexclusive right to use the common elements, for the purposes for which they are intended, subject, however, to the following provisions: (a) no such use shall enter or encroach upon the lawful rights of other persons; and (b) the Association may restrict the use of and govern the operation of the common elements by promulgating reasonable rules and regulations with respect thereto.

(1) Pets. Each Unit Owner shall be permitted to have not more than two (2) dogs and/or cats per Unit (each under 65lbs in weight), unless specifically disapproved by the Association; provided, however, in all events, household pets must be leashed or under the direct control of a Unit Owner within the common elements and limited common elements of the Condominium. No pets are to be kenneled, boarded, caged or otherwise kept outside of the Owner's Unit in either the common areas or limited common areas. Noise by pets (barking, etc...) must be strictly controlled so as not to disturb others.

The keeping of pets on the Condominium shall be subject to the rules and regulations adopted by the Board in addition to the restrictions set forth in this Declaration. The Board shall have

the authority to exclude certain breeds or categories of pets, e.g., snakes, Pit Bull Terriers, Rottweilers, or other breeds which the Board, in its sole discretion may deem to be dangerous or pose a threat to the health or safety of Owners or Occupants. The Board may require that any pet that, in the Board's opinion, endangers the health of any Owner or Occupant or creates a nuisance or unreasonable disturbance be permanently removed from the Condominium upon seven (7) days written notice. If the Owner or Occupant fails to do so, the Board may remove the pet. Furthermore, the Board shall have the authority to create fines or assessments for rules infractions relating to pets. All dogs must be kept on a leash and be under the physical control of a responsible person at all times while on the Common Elements. Feces left upon the Common Elements by pets must be immediately removed by the Owner, Occupant or other responsible person in charge of the pet. The Owner is subject to fines or assessments as may be set by the Board for rules infractions in that regard or for other rules infractions.

Any Owner or Occupant who keeps or maintains any pet upon the Condominium shall be deemed to have agreed to hold harmless and indemnify the Association, its Directors, Officers, and Agents free from any liability, claim or losses of any kind or character whatsoever arising by reason of having such pet within the Condominium.

(m) Right of Entry. In case of any emergency originating in or threatening any Unit or the Condominium or any part thereof, regardless of whether the Owner or his Tenant, if any, is present at the time of such emergency, the Association's Board of Directors and all managerial personnel (such personnel to be

adequately bonded or insured), and any agents thereof, shall have the right to enter such Unit for the purposes of remedying or abating the cause of such emergency, and such right of entry shall be immediate. To facilitate entry in the event of any such emergency, the Owner of each Unit, if required by the Association, shall deposit with the Association a key to such Unit.

(n) Other Restrictions, Rules and Regulations. The Association, through its Board of Directors, shall have the authority to promulgate and publish such additional Condominium rules and regulations governing the use of the Property, as is deemed necessary to insure the protection and the beneficial enjoyment thereof by all Owners.

(o) Use and Leasing. Except as otherwise expressly permitted by this Declaration, all Units must be used or leased for residential purposes. All lease or rental agreements concerning any of the Units must be approved by the Association prior to execution by the Unit Owner. All leases or rental agreements for Units shall (a) be in writing, and (b) require any tenants or lessees entering into such leases or rental agreements to abide by the terms of this Declaration (collectively, the "Lease Requirements").

(p) Occupancy Limits. Any Unit used for residential purposes shall have no more than one (1) occupant per 350 square feet rounded to the next highest 350 square foot multiple. By way of example, a 950 square foot Unit would allow for three (3) occupants (950 sq. ft. rounded up to next highest multiple of 350 is 1050.  $1050 \div 350 = 3$ ).



(q) Sales Offices. The Declarant and its duly authorized agents, representatives and employees shall have the right to maintain a sales office and model Units on the Property so long as Declarant owns any Unit for the purpose of sale.

ARTICLE 17. NOTICE OF LIEN OR JUDGMENT

(a) A Unit Owner shall give notice to the Association of every lien upon his Unit, other than for permitted mortgages, taxes and special assessments, within five (5) days after the attaching of the lien. Failure to comply with this subparagraph shall not affect the validity of any judicial sale.

(b) Notice shall be given to the Association of every judgment against any Unit Owner.

ARTICLE 18. DECLARATION PREPARATION

This formal Declaration of Condominium was prepared by Mark T. Shawe, Attorney at Law, 14 East State Street, Savannah, Georgia 31401, as attorney for Declarant.

ARTICLE 19. COMPLIANCE AND DEFAULT

(a) Each Unit Owner shall be governed by and shall comply with the terms of this Declaration, by the Articles of Incorporation, By-Laws, and regulations of the Association as they may be amended from time to time. A default shall entitle the Association or other Unit Owners to the relief described in subparagraph (b) of this paragraph and the By-Laws in addition to the remedies provided by the Condominium Act.

(b) A Unit Owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness or by that of his guests, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the

Association. Such liability shall include any increase in fire insurance occasioned by use, misuse, occupancy, or abandonment of a Unit or its appurtenances. In any proceeding arising because of an alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney's fees as may be awarded by the court.

(c) The failure of the Association or any Unit Owner to enforce any covenant, restriction, or other provision of the Condominium Act, this Declaration, the Articles of Incorporation, the By-Laws, or the regulations adopted pursuant thereto, shall not constitute a waiver of the right to do so thereafter.

#### ARTICLE 20. RIGHTS OF MORTGAGE HOLDERS

Notwithstanding any of the foregoing provisions of this Declaration, the following provisions are hereby adopted for the protection of mortgagees (and any insurers or guarantors of the applicable mortgages) of individual Condominium Units within the project, and to the extent that they conflict with the foregoing provisions, shall control:

(a) None of the foregoing provisions, nor any provisions of the By-Laws of the Association shall entitle a Condominium Unit Owner, Declarant, or any other party, priority over any rights of first mortgagees of Condominium Units with regard to a distribution to Condominium Unit Owners of insurance proceeds or Condominium awards for losses to or the taking of Condominium Units or common elements.

(b) The Association shall give written notice to any first mortgages of individual Condominium Units of any loss to or taking of, the common areas of the Condominium project if such loss or taking exceeds \$10,000.00 or if damage to a Condominium

Unit covered by a mortgage exceeds \$1,000.00.

(c) The Association shall provide, upon request, any mortgagee of individual Units within the project with written notice of any default in the performance of any obligation of any Unit Owner under this Declaration or By-Laws of the Association which is not cured within sixty (60) days.

(d) Any mortgagee of an individual Condominium Unit shall have the right to examine the books and records of the Association or the Declarant. The Association shall be required to make available to any mortgagee of an individual Condominium Unit's current copies of the Declaration, By-Laws, other rules concerning the Condominium, and the books, records and financial statements of the Association. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

(e) Subject to the provisions of this agreement, any mortgagee of any individual Condominium Unit within the project who obtains title to a Condominium Unit pursuant to the provisions of the mortgage by transfer by deed in lieu of foreclosure, or foreclosure of the mortgage shall not be personally liable for any part of the unpaid dues directly liable for all of the unpaid dues or charges attributable to such Unit which have accrued prior to the acquisition of title to such Unit by the mortgagee. Such unpaid dues or charges shall, however, constitute liens as provided herein or under Georgia Law.

(f) No provision of the Condominium instruments shall be construed to grant to any Unit Owner or to any other party, any priority over any rights of first mortgages of the Units pursuant to their first mortgages in the case of a distribution to Unit

Owners of insurance proceeds or condemnation awards for losses to or a taking of Units and/or the common elements or any portions thereof.

#### ARTICLE 21. CONTROL OF THE ASSOCIATION

The Declarant is hereby authorized to appoint and remove any member or members of the Board of Directors and any officer or officers of the Association until the occurrence of the earliest of the following:

(a) the expiration of three (3) years after the recording of this Declaration; or

(b) the date at which 80% of the Units shall have been conveyed by Declarant to the Unit Owners other than Declarant, unless at such time the Declarant's option to add additional property has not expired; or

(c) the date as of which the Declarant surrenders the authority to appoint and remove members of the Board of Directors and officers by an express amendment to this Declaration which is executed and recorded by the Declarant.

#### ARTICLE 22. AMENDMENTS

This Declaration may be amended in the following manner:

(a) Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

(b) A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the members of the Association. Amendments must be approved by the Owners of not less than 67% of the common areas of the Condominium.

(c) No amendment shall discriminate against any Unit Owner or against any Unit or class or group of Units unless Owners so affected shall consent. No amendment shall change any Unit boundary nor the share in the common areas appurtenant to it, nor the Owner's share of the common expenses, unless all Unit Owners and all record Owners of liens thereon shall join in the execution of the amendment.

(d) A copy of each amendment shall be certified by the President and Secretary of the Association as having been duly adopted and shall be effective when recorded in the office of the Clerk of the Superior Court of Chatham County, Georgia.

#### ARTICLE 23. SEVERABILITY

The invalidity in whole or in part of any covenant or restriction, or any section, subsection, sentence, clause, phrase, or word, or other provisions of this Declaration and the Articles of Incorporation, By-Laws, and regulations of the Association shall not affect the validity of the remaining portion thereof.

#### ARTICLE 24. MISCELLANEOUS

(a) All personal pronouns used in this Agreement whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural, and vice versa.

(b) Titles of articles and sections in this Agreement are for convenience only and in no way define, limit, amplify or describe the scope or intent of any provisions hereof.

(c) If any provisions hereof or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application

of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(d) Incorporation of the Act. Except as modified or expanded by the provisions of this Declaration, the Act and all of the terms, conditions and provisions thereof as existing on the date hereof are hereby by reference incorporated herein.

(e) Multiple Owners. If any Unit shall be owned as tenants in common by two or more persons, such persons shall be jointly and severally liable for the common expenses assessed against such Unit and for the prompt discharge of each and every obligation or duty imposed on such Owners by the Condominium instruments.

(f) Notice of Lien or Suit. A Unit Owner shall give prompt notice to the Association: (a) of every mortgagee or lien against his Unit; (b) of every suit or other proceeding which may affect the title to his Unit; (c) of any notice, demand, or other communication from a mortgagee holding a mortgage on such Unit demanding payment of the debt secured by such mortgage, accelerating or proposing to accelerate the maturity of such debt, or in any manner informing such Owner of an actual, pending, or alleged default by Owner under such mortgage.

(g) Notices. Any notice or consent required by the Act or by any of the Condominium instruments shall be a written notice delivered to the recipient or mailed to recipient by United States mail, postage prepaid, at recipient's last known address, if the recipient is an individual, or addressed to the President of the Association, if the recipient is the Association. All notices delivered by mail shall be deemed to have been given as

of the date and hour of the postmark thereon. The address of Unit Owners shown on the records maintained by the Secretary of the Association shall be the address of such Owner for mailing of all notices required from the Board of Directors or the Association, and it shall be the responsibility of each Owner to furnish the Secretary with written notice of any error in such records or change of address.

(h) Notice of Action to Lenders. Upon written request to the Association identifying the name and address of the holder, insurer, or guarantor of any deed to secure debts securing a Unit and the Unit number or address, any such eligible lender or eligible insurer or guarantor will be entitled to timely written notice of:

- (i) Any condemnation loss or any casualty loss which affects a material portion of the project or any Unit on which there is a first deed to secure debt held, insured, or guaranteed by such eligible lender or eligible insurer or guarantor, as applicable;
- (ii) Any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a first deed to secure debt held, insured, or guaranteed by such lender or eligible insurer or guarantor, which remains uncured for a period of sixty (60) days;
- (iii) Any lapse, cancellation, or material modification of any insurance policy or

fidelity bond maintained by the Association;

(iv) Any proposed action which would require the consent of a specified percentage of eligible holders of Unit deeds to secure debt.

(i) The Association shall have a reasonable right of entry upon any Unit to make emergency repairs and to do other work that is reasonably necessary for the proper maintenance and operation of the project. Additionally, the Association shall have the right to grant permits, licenses, and easements over the common areas for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the project.

(j) The Owners Association's Board of Directors shall have the authority and duty to levy and enforce the collection of general and special assessments for common expenses, and shall provide adequate remedies for failure to pay such assessments. Reasonable restrictions on the increase of assessments may be provided; nevertheless, an assessment against any Unit, with interest, costs, and a reasonable attorney's fee shall become a lien upon such Unit if not paid when due in accordance with the Georgia Condominium Act. Each assessment against a Unit shall also be the personal obligation of the Owner of the Unit at the time the assessment became due. Such a personal obligation shall not pass successors in title unless assumed by them, or required by the Act. Common expenses include expenditures made or liabilities incurred by the Association together with payments or obligations to reserve accounts. Assessments shall be collected by the Association on a monthly basis.



(k) To the extent permitted by the Act, any lien of the Owners Association for common expense assessments, or other charges, becoming payable on or after the date of recordation of the first mortgage on any Unit shall be subordinate and inferior to the operation and effect of said first mortgage. A lien for common expense assessments shall not be affected by any sale or transfer of a Unit except that a sale or transfer pursuant to a foreclosure of a first mortgage shall extinguish a subordinate lien for assessments which became payable prior to such sale or transfer. Any such delinquent assessments which are extinguished pursuant to the foregoing provision shall be reallocated and assessed to all of the Units as a common expense, unless collected from the Unit Owner having personal liability therefor. Any such sale or transfer pursuant to a foreclosure does not relieve the purchaser or transferee of a Unit from liability for, nor the Unit from the lien of, any assessments made thereafter.

(l) The Owners Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the common areas and limited common areas which the Association may be obligated to maintain. The fund shall be maintained out of regular assessments for common expenses.

(m) A working capital fund shall be established for the initial months of the project's operation equal to two (2) month's assessment for each Unit. Each Unit's share of the working capital fund must be collected and transferred to the Association at the time of closing of the sale of each Unit and maintained in an account for the use and benefit of the Association. The purpose of the fund is to insure that the

Association Board will have cash available to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable. Amounts paid to the fund are not to be considered as advance payment of regular assessments.

(n) The Declarant shall be required to pay association dues to the Association on unsold Units commencing with the month next following first sale of any Unit within the development.

#### ARTICLE 25. SEPARATE REAL ESTATE TAXES

Real estate taxes shall be separately taxed to each Unit Owner for his/or her Unit and his/or her corresponding percentage of ownership in the Common Elements, as provided in the Act. In the event that such taxes for any year are not separately taxed to each Unit Owner, but rather are taxed on the Property as a whole, then each Unit Owner, shall pay his/or her proportionate share thereof in accordance with his/or her respective percentage of ownership interest in the Common Elements, and, in said event such taxes shall be a Common Expense.

#### ARTICLE 26. SECURITY AND SAFETY

Each Owner and Occupant, for himself or herself and his or her Occupants, family, guests, licensees, and invitees, acknowledges and agrees that the Association is not an insurer or guarantor of security and shall have no duty to protect persons or personal property on the Condominium from loss, damage, or injury arising from the unlawful or negligent acts of third persons. It shall be the sole responsibility of each Owner and Occupant and each other person entering upon the Condominium to protect his or her own person and property. Neither the Association, its Board of Directors, managing agent, employees, nor the Declarant shall be held liable for any loss or damage by

reason of failure to provide adequate security or ineffectiveness of safety measures undertaken.

#### ARTICLE 27. CONVERTIBLE SPACE

The free standing structure on the alley which is generally referred to as a "carriage house" has been labeled as "convertible space" on the plans of condominium and further shown as a "two-story brick building" on the plat and is hereby expressly reserved in this Declaration as convertible space for which Declarant shall have the express, unilateral right to modify, renovate (both and internally and externally) and create therein a unit of such vertical and horizontal boundaries, dimensions and scope as Declarant determines, in the exercise of its discretion, is appropriate for the design and implementation of such convertible space. Declarant's rights shall be governed by this Declaration as well as all rights available to Declarant pursuant to the Condominium Act.

The convertible space currently contains habitable space as well as garage-type unfinished space on the interior, and one or more balconies, stairs and stairlanding on the exterior. Declarant shall have the right to redesign or reconfigure the interior of the building as to the vertical and horizontal dimensions of the "unit" resulting therefrom, to create limited common elements on the interior or exterior of the carriage house structure/convertible space assigned to such unit within the convertible space, to renovate the exterior of the structure, and to create limited common elements or general common elements out of the remaining convertible space which may benefit other units in the entire condominium. However, Declarant is under no obligation to create limited common elements or general common

elements for the use or benefit of unit(s), it being express and unequivocal that Declarant's rights in this regard are discretionary.

Article 6 of this Declaration sets forth the percentage or proportionate share of all units in the common areas, profits, reserves and expenses. The convertible space bears a proportionate share as stated therein. The method of allocation among the units created from the convertible space, number of votes in the Association, and liability for common expenses as previously pertained to such convertible space shall be as follows:

The unit created within the convertible space shall bear the full 12.4% share of the common areas, common profits, reserves and expenses as set forth in Article 6 that was heretofore allocated to the convertible space. The convertible space is entitled to one (1) vote as any other unit in the condominium, and the unit resulting from the convertible space shall have and retain the vote attributable to the convertible space once the unit is created by the filing of the required amendment to this Declaration together with the plan(s) required by the Act. It is Declarant's intention that every unit shall be entitled to one (1) vote under the By-Laws of the Association regardless of the percentage (%) set forth in Article 6 of the Declaration.

The convertible space shall be treated the same as any unit with respect to insurance protection and coverage afforded by the Declaration and the Act.

The Unit Owners in the Condominium agree that in the possible exercise of Declarant's renovations of Convertible Space, Declarant's agents will be engaging in construction activities related to the renovation or construction of the additional Unit, and Common or Limited Common Element improvements in the Convertible Space. Such construction activities may, from time to time, produce certain conditions on the Condominium, including, without limitation; (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) noxious, toxic, or corrosive fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) unusual fire or explosion hazards; (vii) temporary interruption of utilities; and/or (viii) other conditions that may threaten the security or safety of persons on the Condominium. Notwithstanding the foregoing, Unit Owners agree that by accepting title to their Unit that such conditions on the Condominium resulting from such construction activities shall not be deemed a nuisance or discomfort to the Unit Owner, their family, guests or invitees, and shall not cause Declarant and its agents to be deemed in violation of any provision of the Declaration or otherwise give rise to a cause of action under any legal or equitable theory of recover for damages, or for injunctive relief.

IN WITNESS WHEREOF, the Declarant has executed this Declaration on the day and year first above written.

RDGM ENTERPRISES, LLC

By: Richard G. Mopper  
Richard G. Mopper, Manager

Signed, sealed and delivered on this 14<sup>th</sup> day of September 2007.

Michelle Junkin  
Witness

Mark T. Shaw  
Notary Public



EXHIBIT "A" TO  
DECLARATION OF CONDOMINIUM OF  
101-103 WEST GORDON, A CONDOMINIUM

LEGAL DESCRIPTION

PARCEL ONE:

ALL that certain lot, tract or parcel of land situate, lying and being in the City of Savannah, County of Chatham, State of Georgia; and known upon the map of said City as the EASTERN ONE-THIRD OF LOT 23, CHATHAM WARD, said eastern one-third being on the southwest corner of Whitaker and Gordon Streets and having a northern frontage of 20 feet on Gordon Street, more or less, and a rectangular depth of 100 feet more or less, southwardly along the western side of Whitaker Street to a lane, and bounded on the North by Gordon Street; on the East by Whitaker Street; on the South by said lane; and on the West by the western two-thirds of said Lot Number 23; together with improvements known as 101 West Gordon Street.

PARCEL TWO:

ALL that certain lot, tract or parcel of land situate, lying and being in the City of Savannah, County of Chatham, State of Georgia; and known upon the map of said City as the MIDDLE PART OR ONE-THIRD OF LOT 23, CHATHAM WARD, being the same property formerly known and designated as Number 2, Gordon Block. Said lot has a northern frontage of 20.2 feet on Gordon Street between Whitaker and Barnard Streets, with a rectangular dept of 100 feet, more or less, southwardly to a lane, and is bounded on the north by Gordon Street, on the east by the eastern one-third of said lot, on the south by said lane and on the west by the western one-third of said lot, the improvement thereon being known according to the house numbering system of the City of Savannah as 103 West Gordon Street.

EXHIBIT "B"

TO

DECLARATION OF CONDOMINIUM

101-103 WEST GORDON

A Condominium

Savannah, Chatham County, Georgia

Plat

Reference is hereby made to the plat or survey prepared by Carl R. Jackson, R.L.S. No. 2555 of Carl R. Jackson Land Surveyor, Inc., recorded in Condominium Plans Book 2-C, Pages 419 in the Office of the Clerk of the Superior Court of Chatham County, Georgia, which are specifically made a part hereof and incorporated herein by reference.

Plans of Building

Reference is hereby made to the Plans of Building of 101-103 West Gordon, A Condominium, prepared by Ciphers Design Co., recorded in Condominium Plans Book 2-C, Pages 420A thru 420F in the Office of the Clerk of the Superior Court of Chatham County, Georgia, which are specifically made a part hereof and incorporated herein by reference.