

BYLAWS  
OF  
PARK REGENCY CONDOMINIUM ASSOCIATION, INC.

Article I  
General

Section 1. Applicability. These Bylaws provide for the self-government of Park Regency Condominium Association, Inc., in accordance with the Georgia Condominium Act, the Articles of Incorporation filed with the Secretary of State and the Declaration for Park Regency, a Condominium, recorded (or to be recorded) in the Fulton County, Georgia land records ("Declaration").

Section 2. Name. The name of the corporation is Park Regency Condominium Association, Inc. ("Association").

Section 3. Definition. The terms used herein shall have their generally accepted meanings or such meanings as are specified in Paragraph 2 of the Declaration.

Section 4. Membership and Allocation of Votes. All 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 Park Regency Condominium Association, Inc., and, except as otherwise provided herein or in the Declaration, 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 these Bylaws. Subject to the provisions of the Declaration and these Bylaws, each Owner shall be entitled to one (1) vote for each Residential Unit or Service Unit in which he or she holds the interest required for membership, which vote shall be appurtenant to such Residential Unit or Service Unit, as the case may be. If an Owner combines two or more Residential Units into one Residential Unit, such Owner shall have as many votes as appertained to the Units before combination. If an Owner subdivides his Unit into two or more Units, the Owner of each Unit created thereby shall have that percentage of the votes appurtenant to the Unit before subdividing as corresponds to the ratio of floor space between the subdivided Units. If an Owner transfers a portion, but not all, of his Unit to the Unit Owner of an adjacent Unit so that the portion so transferred is combined with the adjacent Unit, there is no transfer of vote; both the transferor Owner and the transferee Owner shall have the same number of votes as they had immediately prior to the transfer. Upon the conveyance or transfer of an Owner's ownership interest to a new Owner, the new Owner shall simultaneously succeed to the former Owner's membership in the Association. Upon the conveyance or transfer of a portion of an Owner's ownership interest, the transferring Owner and the transferee thereof shall share the membership in the Association attributable to the Unit in accordance with their respective ownership interest in the Unit following such conveyance or transfer. All votes for Parking Units shall be included in the votes attributable to Residential Units, and votes attributable to Residential Units shall not be affected by the number of Parking Units owned.

Section 5. Entity Members. The Declarant may exercise the voting rights with respect to Units owned by it. In the event an Owner is a corporation, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust, or manager of such other legal entity shall be eligible to represent such entity or entities in the affairs of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity or entities which own the Unit, and termination of the person's relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving and such vacancy will be filled in accordance with these Bylaws.

Section 6. Voting Procedures. Each vote may be cast by the Owner, a representative of the Owner in the case of an entity member as provided in Section 5 above, the Owner's spouse, or by a lawful proxy as provided below. When more than one (1) Person owns a Unit, the vote for such Unit shall be exercised as they determine between or among themselves, but in no event shall more than one (1) vote be cast with respect to any Unit. If only one (1) co-owner attempts to cast the vote for a Unit it shall be conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such Unit. In the event of disagreement between or among co-owners and an attempt by two (2) or more of them to cast such vote or votes, such Persons shall not be recognized and such vote or votes shall not be counted. No Owner shall be eligible to vote, either in person or by proxy, or to be elected to the Board of Directors, if that Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or if the Owner has had its voting rights suspended for the infraction of any provision of the Declaration, these Bylaws, or any rule of the Association. If the voting rights of an Owner have been suspended, that Owner shall not be counted as an eligible vote for purposes of establishing a Majority or a quorum.

Section 7. Majority. As used in these Bylaws, the term "Majority" shall mean those eligible votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total number of eligible votes, Owners, or other group, respectively. Unless otherwise specifically stated, the words "Majority vote" mean more than fifty (50%) percent of those voting in person or by proxy. Except as otherwise specifically provided in the Declaration or these Bylaws, all decisions shall be by Majority vote.

Section 8. Purpose. The Association shall have the responsibility of administering the Condominium, establishing the means and methods of collecting the contributions to the Common Expenses, arranging for the management of the Condominium and performing all of the other acts that may be required to be performed by the Association pursuant to the Act, the Georgia Nonprofit Corporation Code and the Declaration. Except as to those matters which the Act, the Declaration or the Georgia Nonprofit Corporation Code specifically require to be

performed by the vote of the Association membership, the administration of the foregoing responsibilities shall be performed by the Board of Directors as more particularly set forth below.

## Article II Meetings of Members

Section 1. Annual Meetings. The regular annual meeting of the members shall be held during the month of January each year with the date, hour, and place to be set by the Board of Directors.

Section 2. Special Meetings. Special meetings of the members may be called for any purpose at any time by the President, the Secretary, or by request of any two (2) or more members of the Board of Directors, or upon written petition of fifteen (15%) percent of the Owners. Any such written petition by the members must be submitted to the Association's Secretary. The Secretary shall then verify that the required number of members have joined in the petition and shall submit all proper petitions to the Association's President. The President shall then promptly call a special meeting for the purpose stated in the petition, and the Secretary shall send notice of the meeting in accordance with these Bylaws.

Section 3. Notice of Meetings. It shall be the duty of the Secretary to mail or deliver to each Owner of Units of record or to the Units a notice of each annual or special meeting of the Association at least twenty-one (21) days and not more than sixty (60) days prior to each annual meeting and at least seven (7) days and not more than sixty (60) days prior to each special meeting. The notice shall state the purpose of any special meeting, as well as the time and place where it is to be held. The notice of an annual meeting shall state the time and place of the meeting. If any Owner wishes notice to be given at an address other than his or her Unit, the Owner shall provide the Secretary of the Association with such other address. The mailing or delivering of a notice of meeting in the manner provided in this Section shall be considered proper service of notice.

Section 4. Waiver of Notice. Waiver of notice of meeting of the Owners shall be deemed the equivalent of proper notice. Any Owner may, in writing, waive notice of any meeting of the Owners, either before or after such meeting. Attendance at a meeting by an Owner, whether in person or represented by proxy, shall be deemed waiver by such Owner of notice of the time, date, and place thereof unless such Owner specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

Section 5. Quorum. Except as may be provided elsewhere, the presence of Owners, in person or by proxy, entitled to cast one-third (1/3) of the eligible votes of the Association shall constitute a quorum. Once a quorum is established for a meeting, it shall conclusively be presumed to exist until the meeting is adjourned and shall not need to be reestablished. Owners

whose voting rights have been suspended pursuant to the Declaration or these Bylaws shall not be counted as eligible votes toward the quorum requirement.

Section 6. Adjournment. Any meeting of the Owners may be adjourned from time to time for periods not exceeding ten (10) days by vote of the Owners holding the Majority of the votes represented at such meeting, regardless of whether a quorum is present. Any business which could be transacted properly at the original session of the meeting may be transacted at a reconvened session, and no additional notice of such reconvened session shall be required.

Section 7. Proxy. Any member entitled to vote may do so by written proxy duly executed by the member setting forth the meeting at which the proxy is valid. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered by personal delivery, U.S. mail or facsimile transmission to any Board member or the property manager. Proxies may be revoked only by written notice delivered to the Association, except that the presence in person by the giver of a proxy at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

Section 8. Action Taken Without a Meeting. Any action that may be taken at any annual, regular, or special meeting of members may be taken without a meeting if the Association delivers a written ballot to every member entitled to vote on the matter.

(a) A written ballot shall:

(i) Set forth each proposed action; and

(ii) Provide an opportunity to vote for or against each proposed action.

(b) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(c) All solicitations for votes by written ballot shall:

(i) Indicate the number of responses needed to meet the quorum requirements;

(ii) State the percentage of approvals necessary to approve each matter other than election of directors; and

(iii) Specify the time by which a ballot must be received by the Association in order to be counted.

(d) A written ballot may not be revoked. The Association shall maintain such ballots in its file for a period of at least three (3) years.

Section 9. Voting List. An alphabetical list of the names and addresses of Unit Owners entitled to vote shall be maintained at the registered office of the Association which list shall include the number of votes attributable to such Owner's Unit.

Section 10. Business. The Board may prescribe reasonable rules for the conduct of all meetings of the Board and Owners.

### Article III Board of Directors

Section 1. Composition. The affairs of the Association shall be governed by a Board of Directors.

(a) Until the Declarant's authority to appoint Directors has ended in accordance with paragraph 19 of the Declaration, the Board shall consist of one (1) or more persons, each appointed by Declarant.

(b) After Declarant's said authority to appoint Directors has ended, the Board shall be composed of not less than nine (9) members and not more than fifteen (15) members, the precise number to be fixed by resolution of the Board from time to time. In addition, so long as Declarant owns at least ten (10) Units, a representative of the Declarant, appointed by the Declarant, shall serve as an ex officio non-voting member of the Board, who shall be entitled to participate in all Board proceedings including executive sessions, and shall further serve as an ex officio non-voting member of all committees of the Board. Such ex officio member of the Board shall serve in addition to any officer or employee of Declarant who may be a regular voting member of the Board elected in accordance herewith. Except for Directors appointed by Declarant, directors shall be Owners of Units, representatives of Owners in the case of entity Owners as provided in Article II, Section 5 above, or spouses of such Owners; provided, however, no Owner and his or her spouse may serve on the Board at the same time, and no co-owners may serve on the Board at the same time. If a director shall cease to meet such qualifications during the term he shall cease to be a director and his place on the Board shall be deemed vacant.

Section 2. Term of Office. Upon Declarant's authority to appoint Directors terminating under paragraph 19 of the Declaration, a meeting of members shall be held as soon as practicable to elect Directors. Directors shall be elected by the vote of those members present or represented by proxy, at said meeting or thereafter at the annual or other meeting of the

membership of the Association, a quorum being present. Those persons receiving the most votes (even if not a Majority) shall be elected to the number of positions to be filled. All successor directors shall be elected for three (3) year terms and shall hold office until their successors are elected. No person shall be permitted to serve more than six (6) years as a member of the Board.

Section 3. Removal of Members of the Board of Directors. At any regular or special meeting of the Association duly called, any one or more of the members of the Board may be removed with cause by two-thirds (2/3) of all of the members of the Association and a successor may then and there be elected to fill the vacancy thus created. Any director whose removal has been proposed shall be given at least ten (10) days notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting.

Section 4. Vacancies. Vacancies in the Board caused by any reason, except the removal of a director by vote of the membership, shall be filled by a vote of the Majority of the remaining directors, even though less than a quorum, at any meeting of the Board, except that so long as Declarant has authority to appoint directors pursuant to paragraph 19 of the Declaration, a vacancy shall be filled by appointment by the Declarant. The successor so selected shall hold office for the remainder of the term of the director being replaced.

Section 5. Compensation. Directors shall not be compensated for services as such unless and only to the extent that compensation is authorized by a Majority vote of all of the Owners. Directors may be reimbursed for the expenses incurred in carrying out their duties as directors upon approval of such expenses by the Board.

Section 6. Director Conflicts of Interest. Nothing herein shall prohibit a director from entering into a contract and being compensated for services or supplies furnished to the Association in a capacity other than as director, provided that the director's interest is disclosed to the Board and the contract is approved by a Majority of the directors who are at a meeting of the Board at which a quorum is present, excluding the director with whom the contract is made; provided, however, the interested director shall count for purposes of establishing a quorum of the Board. The interested director shall be entitled to be present at any meeting at which the proposed contract is discussed and to discuss the proposed contract unless requested by any other director to leave the room during the discussion.

Section 7. Nomination. Nomination for election to the Board shall be made by a Nominating Committee which shall be appointed by the Board. The Nominating Committee may nominate any number of qualified individuals, but not less than the number of directors to be elected. The nominations shall be made at least fourteen (14) days prior to the annual meeting. Nominations shall also be allowed from the floor at the meeting of members of the Association. Each candidate shall be given a reasonable opportunity to communicate his or her qualifications to the membership prior to the election. No member shall be nominated for election to the Board, nor permitted to run for election, if more than thirty (30) days past due in the payment of

any assessment. Failure to comply with this Section shall in no way invalidate the election of directors who were not nominated in accordance with the provisions hereof.

Section 8. Elections. All members of the Association eligible to vote shall be entitled to cast their entire vote for each directorship to be filled. There shall be no cumulative voting. The directorships for which elections are held shall be filled by that number of candidates receiving the most votes. Voting for election of Board members shall be by written ballot (unless dispensed by unanimous consent at such meeting at which such voting is conducted).

Section 9. Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by the Board, but such meetings shall be held at least once every three (3) months. The newly elected Board shall meet within ten (10) days after each annual meeting of the membership. Special meetings of the Board may be called by the President or by a Majority of the Board on forty-eight (48) hours notice to each director given by mail, in person, by telephone, telegram or by facsimile transmission, which notice shall state the time, place, and purpose of the meeting. Each Owner shall receive notice (in the same manner as that provided herein for the giving of notice of special Owners meetings) of any meeting of the Board concerning the establishment of a special assessment against all Owners or the amendment of the rules and regulations, and Board meetings concerning such matters shall be open to all Owners. Other Board meetings may, at the option of the Board, be open or closed to Owners. To the extent such other Board meetings are open, notice of such meeting shall be mailed at least forty-eight (48) hours prior thereto unless a waiver of such notice is signed by the person or persons entitled to such notice before the meeting is convened.

Section 10. Waiver of Notice. Any director may, at any time, in writing, waive notice of any meeting of the Board and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any meeting of the Board shall also constitute a waiver of notice by him or her of the time and place of such meeting. If all directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 11. Conduct of Meetings. The President shall preside over all meetings of the Board and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. A Majority of directors shall constitute a quorum for the transaction of business. One or more directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such meeting, provided all persons participating in the meeting can hear each other.

Section 12. Action Without a Meeting. Any action by the Board required or permitted to be taken at any meeting may be taken without a meeting if a Majority of the directors consent in writing to such action. Such written consents must describe the action taken and be signed by

no fewer than a Majority of the directors and such written consent or consents shall be filed with the minutes of the Board.

Section 13. Powers and Duties. The Board shall manage the affairs of the Association and shall have all the powers and duties necessary for the administration of the Condominium and may do all such acts and things as are not by the Act, the Declaration, the Articles of Incorporation, or these Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board shall have the power to and shall be responsible for the following, in way of explanation, but not limitation:

- (a) to elect and remove the officers of the Association as provided herein;
- (b) to administer the affairs of the Association and the Condominium;
- (c) to engage the services of an agent (hereinafter sometimes referred to as the "Managing Agent") to maintain, repair, replace, administer and operate the Condominium or any part thereof for all of the Owners, upon such terms and for such compensation or without such compensation and with such authority as the Board may approve, including a Managing Agent which is affiliated with one or more Directors, or the Declarant, or both;
- (d) to administer manage, and operate the Condominium, including the Common Elements, and to formulate policies therefor;
- (e) to adopt rules and regulations, with written notice thereof to all Owners, governing the details of the administration, management, operation and use of the Condominium and the Common Elements, and to amend such rules and regulations from time to time;
- (f) to provide for the operation, care, upkeep maintenance, repair, replacement and improvement of the Common Elements and payments therefor, and to approve payment vouchers or to delegate such approval to the officers or the Association, the Managing Agent or another manager of the Property;
- (g) to have access to each Unit from time to time as may be necessary for the maintenance, repair or replacement of any Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to one or more other Units;
- (h) to obtain adequate and appropriate kinds of insurance as provided in Paragraph 11 of the Declaration;
- (i) to provide for the designation, employment and dismissal of employees and other personnel necessary or advisable for the maintenance and operation of the Common Elements,



including accountants and attorneys, and to engage or contract for the services of others, and to make purchases for the maintenance, repair, replacement, administration, management and operation of the Condominium and the Common Elements, and to delegate any such powers to a Managing Agent (and any employees or agents of a Managing Agent);

(j) (paragraph reserved);

(k) to appoint committees and to delegate to such committees the Board's authority to carry out certain duties of the Board;

(l) to determine the fiscal year of the Association and to change said fiscal year from time to time as the Board deem advisable;

(m) to estimate the amount of, prepare, adopt and distribute the budget for the Association not less frequently than annually, to provide the manner of assessing, levying on and collecting from the Owners their respective shares of the Common Expenses, as herein provided, and to levy fines and special assessments against one or more Owners or occupants in accordance with the Declaration;

(n) to keep detailed, accurate records of the receipts and expenditures affecting the use and operation of the Condominium;

(o) to enter into agreements or arrangements for premises suitable for use as apartments for maintenance or management personnel, upon such terms as the Board may approve;

(p) to bid and purchase, for and on behalf of the Association, any Unit, or interest therein, at a sale pursuant to a Mortgage foreclosure, a foreclosure of the lien for assessments, special assessments or both, or an order or direction of a court, or at any other involuntary sale, upon the consent or approval of the Owners of seventy-five (75%) percent of the Units, provided that such consent shall set forth a maximum price that the Board or its duly authorized agent may bid and pay for such Unit or interest therein;

(q) to make such Mortgage arrangements and special assessments proportionately among the respective Owners, and other such financing arrangements, as the Board may deem desirable, in order to close and consummate the purchase or lease of a Unit, or interest therein, by the Association, provided, however, that no such financing arrangement shall be secured by an encumbrance on any interest in the Condominium other than the Unit, or interest therein, to be purchased or leased, and the percentage interest in the Common Elements appurtenant thereto;

(r) to operate the parking garage portion of the Building or to assign or rent such parking privileges to Occupants and others upon such terms as the Board may approve;

- (s) to lease guest rooms and other portions of the Common Elements (other than Limited Common Elements) upon such term as the Board may approve;
- (t) to own, encumber, lease, convey, and otherwise deal with Units conveyed to or purchased by the Association or the Board, for and on behalf of the Association;
- (u) to act in a representative capacity in relation to matters involving the Common Elements or more than one Unit, on behalf of the Owners, as their interest may appear;
- (v) to enforce by legal means the provisions of the Declaration, these Bylaws, any rules and regulations of the Association and the Act with respect to the Condominium;
- (w) to renew, extend or compromise indebtedness owed to or by the Association;
- (x) at its discretion, to authorize Occupants to use Common Elements for private parties and gatherings and, at its discretion, to impose reasonable charges for such private use;
- (y) to suspend the right of any Owner to use recreational facilities at the Condominium on the Property so long as such Owner is delinquent in the payment of assessments or any special assessments, and to suspend the right of any Occupant to use recreational facilities at the Condominium as long as such Occupant is in violation of the Declaration, these Bylaws or any rules and regulations of the Association;
- (z) to exercise all other powers and duties of a board of directors of a condominium association or owners as a group referred to in the Act, and all powers and duties of a board of directors referred to in the Declaration or these Bylaws.

Section 14. Non-Delegation. Nothing in this Article or elsewhere in these Bylaws shall be considered to grant to the Board, the Association or to the officers of the Association any powers or duties which, by law, have been delegated to the Owners.

Section 15. Management Agent. The Association may, but shall not be required to, hire a professional management agent or agents, at a compensation established by the Board, to perform such duties and services as the Board shall authorize. Any management contract shall contain a termination clause permitting termination, with or without cause and without penalty, upon no more than thirty (30) days written notice. No management contract shall have a term in excess of one (1) year. If a Managing Agent is hired, the following management standards of performance will be followed unless the Board, by resolution, determines otherwise:

- (a) two (2) or more persons shall be responsible for handling cash to maintain adequate financial control procedures;

(b) cash accounts of the Association shall not be commingled with any other accounts;

(c) no remuneration shall be accepted by the Managing Agent from vendors, independent contractors or others providing goods or services to the Association whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(d) any financial or other interest which the Managing Agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board; and

(e) a financial report shall be prepared at least quarterly for the Association containing:

(i) an income statement reflecting all income and expense activity for the preceding period;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "projected" (budget) format;

(iv) a balance sheet reflecting the financial condition of the Association on an unaudited basis; and

(v) a delinquency report listing all Owners who are delinquent in paying the monthly installments of Association assessments, and describing the status of any action to collect such installments. Unless otherwise provided by the Board, a monthly installment of the Association assessment shall be considered to be delinquent on the fifth (5th) day of each month.

Section 16. Nominating Committee. Pursuant to Section 7 of this Article, there shall be a Nominating Committee to perform the functions specified in Section 7 of this Article.

Section 17. Other Committees. There shall be such other committees as the Board shall determine with the powers and duties that the Board shall authorize.

Section 18. Service on Committees. Unless otherwise provided in these Bylaws or in the resolution authorizing a particular committee, the members of any committee shall be appointed by the President and shall serve at the pleasure of the Board. Any committee member may be removed with or without cause at any time and with or without a successor being named.

Article IV  
Officers

Section 1. Designation. The principal officers of the Association shall be the President, the Vice President, the Secretary, and the Treasurer. The President, Vice President, and Secretary shall be elected by and from the Board, except that prior to the termination of Declarant's authority pursuant to paragraph 19 of the Declaration, these officers need not be Board members. The Treasurer shall be elected by the Board, but need not be a Board member. The Board may appoint one or more Assistant Treasurers, Assistant Secretaries, and such other subordinate officers, as in its judgment may be necessary. Any assistant or subordinate officers shall not be required to be members of the Board. Except for the offices of Secretary and Treasurer, which may be held by the same person, no person may hold more than one (1) office.

Section 2. Election of Officers. The officers of the Association shall be elected annually by Majority vote of all of the members of the Board at the first meeting of the Board following each annual meeting of the members and shall hold office at the pleasure of the Board and until a successor is elected.

Section 3. Removal of Officers. Upon the affirmative vote of a Majority of the members of the Board, any officer may be removed, either with or without cause, and a successor may be elected.

Section 4. Vacancies. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

Section 5. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the members and of the Board. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Georgia Nonprofit Corporation Code, including, but not limited to, the power to appoint committees from among the members from time to time as he or she may in his or her discretion decide appropriate to assist in the conduct of the affairs of the Association.

Section 6. Vice President. The Vice President shall act in the President's absence and shall have all powers, duties, and responsibilities, provided for the President when so acting.

Section 7. Secretary. The Secretary shall keep the minutes of all meetings of the members and of the Board and shall have charge of such books and papers as the Board may direct, and shall, in general, perform all duties incident to the office of the secretary of a corporation organized under Georgia law. The duties incident to the office of the Secretary may be delegated to the Managing Agent.

Section 8. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the Managing Agent in such depositories as may from time to time be designated by the Board. The Treasurer shall be responsible for the preparation of the budget as provided in the Declaration. The Treasurer may delegate all or a part of the preparation and notification duties associated with the above responsibilities to a management agent.

Section 9. Other Officers. Other offices may be created by the Board, and the Board members which hold such offices shall have such titles and duties as are defined by the Board.

## Article V Assessments

Section 1. Annual Budget. The Board shall cause to be prepared and shall adopt and distribute to all Owners a detailed estimated proposed annual operating budget and capital budget for each fiscal year of the Association, as required by and subject to the limitations set forth in Section 10 of the Declaration.

Section 2. Assessments. Assessments shall be made against the Owners in accordance with Sections 8 and 10 of the Declaration.

Section 3. Partial Year or Month. If any fiscal year is less than a full year, then the monthly assessment for each Owner shall be proportionate to the number of months and days in such period covered by such budget. Commencing with the date that an Owner acquired title to his Unit, such Owner shall pay his assessment for the current month or fraction of a month, which assessment shall be in proportion to his respective ownership interest in the Common Elements and the number of days remaining in such month.

Section 4. Annual Report. Within ninety (90) days after the end of each fiscal year covered by an annual budget; or as soon thereafter as shall be practicable, but in any event within one hundred and twenty (120) days after the end of such fiscal year, the Board shall cause to be furnished to each Owner and to the holder of any first Mortgage of any Unit free of charge upon their request an unaudited financial statement for such year so ended, showing the receipts and expenditures and such other information as the Board may deem desirable.

Section 5. Special Assessments. In the event that during the course of any year, it shall appear to the Board that the monthly assessments, determined in accordance with the estimated annual budget for such year, are insufficient or inadequate to cover the estimated Common Expenses for the remainder of such year, or if there shall be any nonrecurring Common Expenses or any Common Expenses not set forth in the annual budget as adopted, then special assessments may be made in accordance with Section 10 (e) of the Declaration.

Return to: Weissman, Nowack, Curry & Wilco, P.C.  
One Alliance Center, 4<sup>th</sup> Floor  
3500 Lenox Road  
Atlanta, GA 30326  
Attn: George E. Nowack, Jr.

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STATE OF GEORGIA

COUNTY OF FULTON

**AMENDMENT TO THE BY-LAWS OF**  
**PARK REGENCY CONDOMINIUM ASSOCIATION, INC.**

**WHEREAS**, the By-Laws of Park Regency Condominium Association, Inc. ("By-Laws") provide for the self-government of Park Regency Condominium Association, Inc. in accordance with the Georgia Condominium Act, the Articles of Incorporation filed with the Secretary of State and the Declaration for Park Regency, a Condominium ("Declaration") recorded on July 13, 2001 in Deed Book 30688, Page 357 *et seq.* of the Fulton County, Georgia land records; and

**WHEREAS**, Article VI, Section 8 of the By-Laws provides that the By-Laws may be amended, modified or rescinded, from time to time, by the affirmative vote of a Majority of all of the Directors at a duly called meeting of the Board of Directors for which proper notice was issued; and

**WHEREAS**, in accordance with Article VI, Section 8(a) of the By-Laws, notice of the subject matter of the proposed amendments was included in the notice of the meeting at which the proposed amendments were considered and adopted by the affirmative vote of a Majority of all of the Directors;

**NOW, THEREFORE**, the By-Laws are hereby amended as follows:

1.

Article III, Section 2, as amended, is hereby further amended by adding the word "consecutive" between the words six (6) and years. So, as amended, the last sentence of Article III, Section 2 shall read as follows:

No person shall be permitted to serve more than six (6) consecutive years as a member of the Board.

**IN WITNESS WHEREOF**, the undersigned of the Park Regency Condominium Association, Inc. hereby certifies that these Amendments to the By-Laws for Park Regency Condominium were duly adopted by a Majority of all of the Directors.

This 5<sup>th</sup> day of October, 2010.

PARK REGENCY CONDOMINIUM  
ASSOCIATION, INC.

By: 

\_\_\_\_\_  
President

Section 6. Records and Statement of Account. The Board shall cause to be kept detailed and accurate books and records of account, in chronological order, of the receipts and expenditures of the Association, specifying and itemizing the Common Expenses and any other expenses incurred. Such records and the vouchers authorizing the payments involved shall be available for examination by the Owners at convenient hours during week days. Payment vouchers may be approved in such manner as the Board may determine.

Section 7. Discharge of Lien. The Board may cause the Association to discharge any lien or other encumbrance which, in the opinion of the Board, may constitute a lien against the Condominium as a whole, the Common Elements, or both, rather than a lien against only a particular Unit. When less than all the Owners are responsible for the existence of any such lien, the Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorneys' fees, incurred by reason of such lien, and the Board may levy special assessments against such Owners to defray such costs and expenses.

Section 8. Holding of Funds. All funds collected hereunder shall be held and expended for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all the Owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the benefit, use and account of all the Owners in proportion to their respective ownership interests in Common Elements.

## Article VI Miscellaneous

Section 1. Notices. Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) If to an Owner, at the address which the Owner has designated in writing and filed with the Secretary, or if no such address has been designated, at the address of the Unit of such Owner;

(b) If to an Occupant, at the address of the Unit occupied;  
or

(c) If to the Association, the Board of Directors or the Managing Agent, at the principal office of the Association or the Managing Agent, if any, or at such other address as shall be designated in writing and filed with the Secretary.



Section 2. Severability. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws or the Declaration.

Section 3. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof.

Section 4. Gender and Grammar. The use of the masculine gender in these Bylaws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

Section 5. Fiscal Year. The fiscal year of the Association may be set by resolution of the Board. In the absence of such resolution by the Board, the fiscal year shall be the calendar year.

Section 6. Financial Review. A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board. However, after having received the Board's financial review at the annual meeting, the Owners may, by a Majority vote of all of the members, require that the accounts of the Association be audited as a Common Expense by an independent accountant.

Section 7. Conflicts. The duties and powers of the Association shall be those set forth in the Act, the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Act, the Georgia Nonprofit Corporation Code, the Declaration, these Bylaws, or the Articles of Incorporation, then the provisions of the Act, the Georgia Nonprofit Corporation Code, as may be applicable, the Declaration, the Articles of Incorporation and these Bylaws, in that order, shall prevail, and each Owner, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies.

Section 8. Amendment. These Bylaws may be amended, modified or rescinded, from time to time, in the following manner:

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

(b) Adoption. The Board shall have the power to alter, amend or repeal any of these Bylaws or to adopt new Bylaws by the affirmative vote of a Majority of all of the Directors.

No amendment may be adopted which would eliminate, modify prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted or reserved to the

Declarant or any institutional Mortgagee without the prior written consent of the Declarant and/or said institutional Mortgagees, as the case may be. No amendment that is in conflict with the Articles or the Declaration shall be adopted.

Any amendment duly certified and recorded (containing any additional signatures required by the Declaration) shall be conclusively presumed to have been duly adopted in accordance with the Declaration and Bylaws. Any action to challenge the validity of these Bylaws or an amendment adopted under this Section must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

Section 9. Liability and Indemnification of Officers and Directors. The Association shall (a) indemnify every officer and director against any and all liability, damages, judgments, costs and expenses, including attorney's fees, reasonably incurred by or imposed upon such officer or director in connection with any claim, action, suit or other proceeding (including settlement of any such claim, action, suit, or proceeding) to which he or she may be made a party by reason of being or having been an officer or director, and (b) pay for or reimburse the reasonable expenses incurred by an officer or director in advance of final disposition of any proceeding; all to the fullest extent permitted by law and in accordance with the provisions of The Georgia Nonprofit Corporation Code Part 5 "Indemnification," §14-3-850 et seq., as amended, which provisions are incorporated herein by reference as permitted by §14-3-858 of said code. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, or committee member or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and, if obtainable, officers', and directors' liability insurance to fund this obligation.

Deed Book 40162 Pg 16  
Filed and Recorded Jun-08-2005 12:14pm  
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Juanita Hicks  
Clerk of Superior Court  
Fulton County, Georgia

-----SPACE ABOVE THIS LINE FOR RECORDER'S USE-----

Please Cross-Reference to: Limited Warranty Deed with Covenants and Easements recorded in Deed Book 18383, Page 182, Fulton County, Georgia records; Modification of Easements recorded in Deed Book 21051, Page 106, Fulton County, Georgia records; Reciprocal Easement Agreement recorded in Deed Book 26371, Page 289, Fulton County, Georgia records; Common Area Maintenance Agreement recorded in Deed Book 18383, Page 244, Fulton County, Georgia records; and Amended and Restated Common Area Maintenance Agreement recorded in Deed Book 26371, Page 326, Fulton County, Georgia records.

After Recording, Please Return to: D. Clayton Howell, Esq.  
King & Spalding LLP  
191 Peachtree Street  
Atlanta, Georgia 30303

**AMENDED AND RESTATED RECIPROCAL EASEMENT AND COMMON AREA  
MAINTENANCE AGREEMENT**

This AMENDED AND RESTATED RECIPROCAL EASEMENT AND COMMON AREA MAINTENANCE AGREEMENT (this "Agreement") is made and entered into this 3rd day of June, 2005, among TAP ASSOCIATES, L.P., a Georgia limited partnership ("TAP"), ESTATES AT PHIPPS LIMITED PARTNERSHIP, a South Carolina limited partnership ("Estates"), PARK REGENCY CONDOMINIUM ASSOCIATION, INC., a Georgia nonprofit corporation ("Park Regency"), ALEXANDER CONDOMINIUM DEVELOPMENT I, LLC, a Georgia limited liability company ("Alexander I"), ALEXANDER CONDOMINIUM DEVELOPMENT II, LLC, a Georgia limited liability company ("Alexander II"), POST SERVICES, INC., a Georgia corporation ("PSI"), POST APARTMENT HOMES, L.P., a Georgia limited partnership ("PAH"), and AKARD-MCKINNEY INVESTMENT COMPANY, LLC, a Texas limited liability company ("Akard").

WITNESSETH:

WHEREAS, TAP is the owner of fee simple title to the real property described in Exhibit "A" attached hereto and by this reference made a part hereof (the "**TAP Tract**");

WHEREAS, Estates is the owner of fee simple title to the real property described in Exhibit "B" attached hereto and by this reference made a part hereof (the "**Estates Tract**");

WHEREAS, Park Regency is the owner of fee simple title to the real property described in Exhibit "C" attached hereto and by this reference made a part hereof (the "**Park Regency Tract**");

WHEREAS, contemporaneously with the execution of this Agreement, Alexander I has acquired from TAP fee simple title to the real property described in Exhibit "D" attached hereto and by this reference made a part hereof (the "**Condo I Tract**");

WHEREAS, contemporaneously with the execution of this Agreement, Alexander II has acquired from TAP fee simple title to the real property described in Exhibit "E" attached hereto and by this reference made a part hereof (the "**Condo II Tract**");

WHEREAS, contemporaneously with the execution of this Agreement, PAH has acquired from TAP fee simple title to the real property described in Exhibit "F" attached hereto and by this reference made a part hereof (the "**Apartment Tract**");

WHEREAS, contemporaneously with the execution of this Agreement, PSI has acquired from TAP fee simple title to the real property described in Exhibit "G" attached hereto and by this reference made a part hereof (the "**Single-Family Tract**");

WHEREAS, contemporaneously with the execution of this Agreement, Akard has acquired from TAP fee simple title to the real property described in Exhibit "H" attached hereto and by this reference made a part hereof (the "**Park Tract**");

WHEREAS, TAP, Estates, and Park Regency previously entered into that certain Limited Warranty Deed with Covenants and Easements dated June 14, 1994, recorded in Deed Book 18383, Page 182, in the office of the Clerk of the Superior Court of Fulton County, Georgia, as modified by that certain Modification of Easements dated June 5, 1996, recorded in Deed Book 21051, Page 106, in the aforesaid records, and as further modified by that certain Reciprocal Easement Agreement dated March 31, 1999, recorded in Deed Book 26371, Page 289, in the aforesaid records (the foregoing agreements are herein collectively called the "**REA**"), creating certain easements in, upon, under through and across certain portions of the TAP Tract, the Estates Tract, and the Park Regency Tract;

WHEREAS, TAP, Estates, and Park Regency previously entered into that certain Common Area Maintenance Agreement dated June 14, 1994, recorded in Deed Book 18383, Page 244, in the office of the Clerk of the Superior Court of Fulton County, Georgia, as modified by that certain Amended and Restated Common Area Maintenance Agreement dated March 31, 1999, recorded in Deed Book 26371, Page 326, in the aforesaid records (the foregoing agreements are herein collectively called the "**CAM Agreement**"), providing for the

maintenance of certain common areas benefiting the parties' respective properties and the sharing of common area maintenance expenses related thereto;

WHEREAS, the Owners desire to amend and restate the REA and the CAM Agreement in their entirety, and by the execution of this Agreement do hereby amend and restate the REA and CAM Agreement in their entirety;

NOW, THEREFORE, for and in consideration of the various easements and rights created herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by TAP, Estates, Park Regency, Alexander I, Alexander II, PSI, PAH and Akard, TAP, Estates, Park Regency, Alexander I, Alexander II, PSI, PAH and Akard hereby covenant and agree as follows:

## ARTICLE I

### Definitions and Interpretation

1.1 Definitions. Whenever used in this Agreement, the following terms and phrases shall have the following meanings:

"Access Easements" means the access easements Granted in accordance with Section 3.1 of this Agreement.

"Access Easement" shall have the meaning ascribed thereto in Subsection 3.1.1 of this Agreement.

"Access Easement Area" shall have the meaning ascribed thereto in Subsection 3.1.1 of this Agreement.

"Agreement" shall have the meaning ascribed thereto in the introductory paragraph above.

"Akard" shall have the meaning ascribed thereto in the introductory paragraph above.

"Alexander I" shall have the meaning ascribed thereto in the introductory paragraph above.

"Alexander II" shall have the meaning ascribed thereto in the introductory paragraph above.

"Apartment Owner" means, at any time, any Person that is the Owner of the Apartment Tract. Initially, PAH is the Owner of the Apartment Tract.

"Apartment Owner Percentage Share" shall have the meaning ascribed thereto in Subsection 6.6.6 of this Agreement.

"Apartment Tract" shall have the meaning ascribed thereto in the recital paragraphs above.

**"Articles of Incorporation"** shall mean the Articles of Incorporation of Alexander Road Homeowners Association, Inc., as amended from time to time.

**"Assessment"** shall mean an Owner's share of the Common Area Maintenance Expenses from time to time assessed against the Tract of such an Owner by the Association in the manner herein provided.

**"Association"** shall mean Alexander Road Homeowners Association, Inc., a Georgia nonprofit corporation to be formed by TAP as provided in Section 4.1 hereof, and its successors.

**"Board of Directors"** or **"Board"** shall mean the Board of Directors of the Association, which is the governing body of the Association.

**"Business Days"** means Monday through Friday excluding holidays of the State of Georgia and/or the United States of America.

**"By-Laws of the Association"** or the **"By-Laws"** shall mean the By-Laws from time to time adopted and amended by Alexander Road Homeowners Association, Inc. to govern the administration and operation of the Association.

**"CAM Agreement"** shall have the meaning ascribed thereto in the recital paragraphs above.

**"Common Areas"** shall have the meaning ascribed thereto in Section 5.2 of this Agreement.

**"Common Area Maintenance Expenses"** shall have the meaning ascribed thereto in Sections 6.3 and 6.4 of this Agreement.

**"Condo I Owner"** means, at any time, any Person that is the Owner of the Condo I Tract. Initially, Alexander I is the Owner of the Condo I Tract.

**"Condo II Owner"** means, at any time, any Person that is the Owner of the Condo II Tract. Initially, Alexander II is the Owner of the Condo II Tract.

**"Condo I Owner Percentage Share"** shall have the meaning ascribed thereto in Subsection 6.6.4 of this Agreement.

**"Condo II Owner Percentage Share"** shall have the meaning ascribed thereto in Subsection 6.6.5 of this Agreement.

**"Condo I Tract"** shall have the meaning ascribed thereto in the recital paragraphs above.

**"Condo II Tract"** shall have the meaning ascribed thereto in the recital paragraphs above.

**"Drainage Plan"** means that plan for draining and discharging storm and surface waters from the Park Regency Tract, Estates Tract, TAP Tract, Apartment Tract, Condo I Tract, and

Condo II Tract through the stormwater drainage facilities (including stormwater drainage lines and a stormwater detention vault) more particularly described on Exhibit "I" attached hereto and by this reference incorporated herein.

**"Easement"** means any easement or other right of use or access Granted by this Agreement, as the context may require.

**"Easements"** means, collectively, and in the plural, each and every Easement.

**"Entity"** means any person, corporation, partnership (general, limited or otherwise), joint venture, association, limited liability company, trust, estate, foundation, pension plan, joint stock company or other business or not-for-profit entity or organization.

**"Estates"** shall have the meaning ascribed thereto in the introductory paragraph above.

**"Estates Owner"** means, at any time, any Person that is the Owner of the Estates Tract. Initially, Estates is the Owner of the Condo Tract.

**"Estates Owner Percentage Share"** shall have the meaning ascribed thereto in Subsection 6.6.2 of this Agreement.

**"Estates Tract"** shall have the meaning ascribed thereto in the recital paragraphs above.

**"Event of Default"** shall have the meaning ascribed thereto in Section 7.1 of this Agreement.

**"Foreclosure"** shall mean, without limitation, (i) the judicial foreclosure of a Mortgage, (ii) the exercise of a power of sale contained in any Mortgage, (iii) the conveyance of the Property encumbered by a Mortgage in lieu of foreclosure thereof, or (iv) any action commenced or taken by a lessor to regain possession or control of property leased to a lessee in a transaction commonly known as a sale/leaseback.

**"Granted"** means, in the context of the Easements described in this Agreement, granted, conveyed, declared, created, imposed and established.

**"Grants"** means, in the context of the Easements described in this Agreement, to grant, convey, declare, create, impose and establish.

**"Improvements"** shall mean, with respect to any Tract, any building or other improvement on such Tract, including but not limited to any parking garage, parking area, porch, shed, driveway, fence, antenna, curbing, paving, wall or hedge more than two (2) feet in height, signboard, lighting, roadway, fountain or other water feature, special landscape amenity, sculpture or other work of art, or any temporary trailer. "Improvements" shall also mean (i) any excavation fill, ditch, diversion, dam, berm, or any thing or device that alters the natural flow of any water in any natural or artificial drainage channel from, or upon, any other Tract; and (ii) any change in the grade of any Tract of more than six (6) inches from that existing at the time of execution of this Agreement.

**"Indemnifying Owner"** shall have the meaning ascribed thereto in Subsection 3.5.1 of this Agreement.

**"Indemnitee"** shall have the meaning ascribed thereto in Subsection 3.5.1 of this Agreement.

**"Internal Road"** shall have the meaning ascribed thereto in Subsection 3.1.1 of this Agreement.

**"Land Records"** means the real property records of the Clerk of the Superior Court of Fulton County, Georgia.

**"Landscape Easement"** shall have the meaning ascribed thereto in Subsection 3.3.4 of this Agreement.

**"Landscape Easement Area"** shall have the meaning ascribed thereto in Subsection 3.3.4 of this Agreement.

**"Laws"** shall mean all federal, state, county, city or other governmental laws, statutes, codes, ordinances, rules, regulations or other legal requirements (including Environmental Laws).

**"Legal Requirements"** means, with respect to any Tract or portion thereof (including any Common Areas), all statutes, codes, Laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county and other governments, departments, commissions, boards, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter are applicable to and enforceable against such Tract or portion thereof, or any use, manner of use or condition of such Tract or portion thereof.

**"Line 1 and 2 Sanitary Sewer Easement"** shall have the meaning ascribed thereto in Subsection 3.2.1 of this Agreement.

**"Line 1 and 2 Sanitary Sewer Easement Area"** shall have the meaning ascribed thereto in Subsection 3.2.1 of this Agreement.

**"Line 1 and 2 Sewer Facilities"** shall have the meaning ascribed thereto in Subsection 3.2.1 of this Agreement.

**"Line 3 Sanitary Sewer Easement"** shall have the meaning ascribed thereto in Subsection 3.2.2 of this Agreement.

**"Line 3 Sanitary Sewer Easement Area"** shall have the meaning ascribed thereto in Subsection 3.2.2 of this Agreement.

**"Line 3 Sewer Extension"** shall have the meaning ascribed thereto in Subsection 3.2.2 of this Agreement.



**"Line 3 Sewer Facilities"** shall have the meaning ascribed thereto in Subsection 3.2.2 of this Agreement.

**"Majority"** shall mean any percentage greater than fifty and no/100ths percent (50.00%).

**"Member"** shall mean every Person that holds a membership in the Association, as described in Section 4.3 hereof.

**"Monetary Default"** shall have the meaning ascribed thereto in Subsection 8.1.1 of this Agreement.

**"Mortgage"** shall mean any fee or leasehold deed to secure debt or similar instrument, at any time and from time to time constituting a securing first-in-priority title to any interest or estate of an Owner in the Property (or any portion thereof), as reflected in the Land Records; provided, however, "Mortgage" shall not mean any fee or leasehold deed to secure debt or similar instrument constituting a lien upon or securing title to all or any portion of the Single-Family Tract or one or more but less than all of the individual condominium units on a Tract (other than a deed to secure debt or similar instrument which initially covers all or substantially all of the condominium units on a Tract and from which condominium units are released as they are sold).

**"Mortgagee"** means any holder, from time to time, of a Mortgage, as reflected in the Land Records.

**"NBCA"** means the North Buckhead Civic Association, Inc., a Georgia nonprofit corporation.

**"New Stormwater Drainage Facilities"** shall have the meaning ascribed thereto in Subsection 3.2.5 of this Agreement.

**"Owner"** means the Person owning fee simple title to a Tract, as shown by the Land Records. Notwithstanding the foregoing, if a Tract or portion of a Tract is subjected to the condominium form of ownership in accordance with Georgia law, then the term "Owner" for such Tract or portion thereof, during the period of time when such Tract is held under the condominium form of ownership, shall for all purposes hereunder mean the condominium association (the "Condominium Association") in accordance with the Georgia Condominium Act (O.C.G.A. §§ 44-3-70 *et seq.*), acting by and through its executive organ on behalf of the owners of the condominium units comprising such Tract. The term "Owner" shall not be construed to include any Person or Persons (i) whose interest in a Tract is (1) fee simple title holder to one or more but less than all of such condominium units in such project, if any, or (2) a security interest or security title holder under any deed of trust, Mortgage, deed to secure debt or other security instrument, unless such Person has acquired fee simple title, or an undivided interest therein, to such Tract by Foreclosure or (ii) who otherwise would not qualify as an Owner hereunder. The Condominium Association, acting by and through its executive organ, shall be authorized to act on behalf of the owners of the condominium units, and the actions of the Condominium Association shall be binding on all condominium units of the condominium and the applicable Tract.

If a Tract is subdivided (other than in connection with a condominium), the Owner for purposes of this Agreement shall be, collectively, the owners of fee simple title to all parcels comprising such Tract, and all parcels comprising such Tract shall be bound by the obligations related to such Tract. In the case of a subdivision, the owners shall be required to designate a single Person (the "Owner Agent") which is authorized to act on behalf of all of the owners of the subdivided Tract vis-à-vis the other Tracts. If the owners of fee simple title to a subdivided Tract (other than a condominium) fail to so designate an Owner Agent, then the Owner Agent shall be deemed to be the Owner holding fee simple title to the largest portion of such Tract. The actions of the Owner Agent shall be binding on all subdivision Owners and the subdivided parcel.

At any time, there shall be only one Owner of each Tract for the purposes of exercising any powers or rights granted to such Tract under this Agreement. The exercise of any powers and rights of an Owner under this Agreement by the Condominium Association or the Owner Agent shall be binding upon all condominium unit owners and subdivision owners, but such designation of a Condominium Association or an Owner Agent shall not relieve any condominium unit owner or subdivision owner or its property from its obligations under this Agreement. The duties and obligations of the Owner of a Tract which has been subjected to a condominium form of ownership or otherwise subdivided shall be binding on such Tract as a whole, and all Persons holding any right, title, interests or estate in such Tract shall be bound by such duties and obligations on a joint and several basis.

**"Owners"** means, at any time, those Persons that are the Owners of the TAP Tract, the Estates Tract, the Park Regency Tract, the Condo I Tract, the Condo II Tract, the Apartment Tract, the Single-Family Tract, and the Park Tract.

**"Park"** means an open green space located on the Park Tract intended to be used by the owners and tenants of the TAP Tract, Estates Tract, Park Regency Tract, Condo I Tract, Condo II Tract, Apartment Tract, the Single-Family Tract and the NBCA for recreational purposes.

**"Park Access Easement"** shall have the meaning ascribed thereto in Subsection 3.3.1 of this Agreement.

**"Park Easements"** means the access and use easements Granted in accordance with Section 3.3 of this Agreement.

**"Park Owner"** means, at any time, any Person that is the Owner of the Park Tract. Initially, Akard is the Owner of the Park Tract.

**"Park Regency"** shall have the meaning ascribed thereto in the introductory paragraph above.

**"Park Regency Drainage Easement"** shall have the meaning ascribed thereto in Subsection 3.2.3 of this Agreement.

**"Park Regency Drainage Easement Area"** shall have the meaning ascribed thereto in Subsection 3.2.3 of this Agreement.

**"Park Regency Drainage Facilities"** shall have the meaning ascribed thereto in Subsection 3.2.3 of this Agreement.

**"Park Regency/Estates Drainage Easement"** shall have the meaning ascribed thereto in Subsection 3.2.4 of this Agreement.

**"Park Regency/Estates Drainage Easement Area"** shall have the meaning ascribed thereto in Subsection 3.2.4 of this Agreement.

**"Park Regency/Estates Drainage Facilities"** shall have the meaning ascribed thereto in Subsection 3.2.4 of this Agreement.

**"Park Regency Owner"** means, at any time, any Person that is the Owner of the Park Regency Tract. Initially, Park Regency is the Owner of the Park Regency Tract.

**"Park Regency Owner Percentage Share"** shall have the meaning ascribed thereto in Subsection 6.6.3 of this Agreement.

**"Park Regency Tract"** shall have the meaning ascribed thereto in the recital paragraphs above.

**"Park Tract"** shall have the meaning ascribed thereto in the recital paragraphs above.

**"Park Use Easement"** shall have the meaning ascribed thereto in Subsection 3.3.2 of this Agreement.

**"Percentage Share"** shall mean the percentage share of any item, including, without limitation, assessments of Common Area Maintenance Expenses attributable to a Tract or to an Owner, as set forth in Section 6.6.

**"Person"** means a natural person, corporation, limited liability company, partnership, sole proprietorship, association, trust or other legal Entity, or any combination thereof.

**"Prohibited Use"** shall have the meaning ascribed thereto in Article VII of this Agreement.

**"PSI"** shall have the meaning ascribed thereto in the introductory paragraph above.

**"REA"** shall have the meaning ascribed thereto in the recital paragraphs above.

**"Releasing Owner"** shall have the meaning ascribed thereto in Subsection 3.5.2(c) of this Agreement.

**"Released Owner"** shall have the meaning ascribed thereto in Subsection 3.5.2(c) of this Agreement.

**"Single-Family Owner"** means, at any time, any Person that is the Owner of the Single-Family Tract. Initially, PSI is the Owner of the Single-Family Tract.

**"Single-Family Owner Percentage Share"** shall have the meaning ascribed thereto in Subsection 6.6.7 of this Agreement.

**"Single-Family Owner Tract"** shall have the meaning ascribed thereto in the recital paragraphs above.

**"Site Plan"** means that certain "Alexander Tract Site Plan" prepared by Long Engineering, Inc., dated June 21, 2004 and last revised November 29, 2004.

**"TAP"** shall have the meaning ascribed thereto in the introductory paragraph above.

**"TAP Owner"** means, at any time, any Person that is the Owner of the TAP Tract. Initially, TAP is the Owner of the TAP Tract.

**"TAP Owner Percentage Share"** shall have the meaning ascribed thereto in Subsection 6.6.1 of this Agreement.

**"TAP Tract"** shall have the meaning ascribed thereto in the recital paragraphs above.

**"Tract"** means any of the TAP Tract, the Estates Tract, the Park Regency Tract, the Condo I Tract, the Condo II Tract, the Apartment Tract, the Single-Family Tract, and the Park Tract.

**"Type A Member"** is defined in Subsection 4.3.1 hereof. **"Type A Membership"** shall mean the rights, privileges, duties, obligations and status of the Type A Member.

**"Type B Member"** is defined in Subsection 4.3.2 hereof. **"Type B Membership"** shall mean the rights, privileges, duties, obligations and status of the Type B Member.

**"Utilities"** means products, commodities, services or facilities that are of public consequence and need and typical for the efficient and economical operation of facilities and projects such as those contemplated for the TAP Tract, the Condo I Tract, the Condo II Tract, the Apartment Tract, the Single Family Tract, and the Park Tract or those existing on the Estates Tract and the Park Regency Tract, including, without limitation, electricity and other sources or mediums of energy transference, water, natural gas, propane, fuel oil, telephone and telecommunications service for voice, video and data transmission, optical cable, cable television, microwave transmission, satellite and transponder reception and transmission, storm water drainage, sanitary sewer and pollutant treatment, control and retention, whether such products, commodities or services are provided by public utility companies, common carriers or private enterprises or as a function of the design and construction of the facilities and projects contemplated for the TAP Tract, the Condo I Tract, the Condo II Tract, the Apartment Tract, the Single Family Tract, and the Park Tract or existing on the Estates Tract and the Park Regency Tract.

**"Utilities Plan"** means that plan for providing Utilities to the TAP Tract, the Condo I Tract, Condo II Tract, the Apartment Tract, the Single Family Tract, and the Park Tract more particularly described on Exhibit "J" attached hereto and by this reference incorporated herein.

"Utility Easements" means the utility easements Granted in accordance with Section 3.2 of this Agreement.

"Water Line Easement" shall have the meaning ascribed thereto in Subsection 3.2.6 of this Agreement.

"Water Line Easement Area" shall have the meaning ascribed thereto in Subsection 3.2.6 of this Agreement.

"Water Line Facilities" shall have the meaning ascribed thereto in Subsection 3.2.6 of this Agreement.

## ARTICLE II

### Amendment and Restatement of the Original REA and the Original CAM

2.1 Amendment and Restatement. The terms and conditions of the REA and the CAM Agreement are hereby amended and restated in their entirety by this Agreement, having the effect of terminating and superseding the REA and the CAM Agreement.

2.2 Termination of Easements. For the avoidance of doubt, all easements previously granted in the REA and not set forth herein are hereby terminated, and, from and after the date hereof, shall be of no further force or effect. It is the intention of the Owners to provide to each Tract via easement areas access to a public street, common stormwater drainage and detention facilities, and sewer connections to a dedicated line. To the extent this document fails to do so, the Owners hereby agree to work in good faith to promptly amend this Agreement to include such easements.

## ARTICLE III

### Grant of Easements

3.1 Access Easements. The Access Easements Granted in this Agreement shall be governed by the provisions of Subsections 3.1.1 through 3.1.5.

3.1.1 Access Easement. TAP Owner and Condo II Owner hereby Grant to the Owners a non-exclusive, perpetual easement in, upon, over, through and across those portions of the TAP Tract and Condo II Tract described on Exhibit K, attached hereto and incorporated herein by reference (the "Access Easement Area"), including, but not limited to, the existing roadway lying therein (as extended pursuant to the terms hereof, the "Internal Road"). The easement granted hereby, hereinafter called the "Access Easement", is granted for the purpose of providing pedestrian, vehicular, construction and service access, ingress and egress to and from the TAP Tract, the Estates Tract, the Park Regency Tract, the Condo I Tract, the Condo II Tract, the Apartment Tract, the Single-Family Tract, the Park Tract and Phipps Boulevard, including for the purpose of constructing and maintaining one or more curb cuts from the TAP Tract, the Condo I Tract, the Condo II Tract, and the Apartment Tract onto the Internal Road.

3.1.2 Extension of Internal Road. TAP Owner hereby Grants to Condo II Owner a temporary, non-exclusive construction easement on, over and under the TAP Tract to extend the Internal Road and sidewalks adjacent to the Internal Road through the Access

Easement Area in accordance with the terms of this Section 3.1.2. Concurrent with the construction of the improvements located on the Condo II Tract, Condo II Owner shall construct, install, pave and complete an extension of the Internal Road through the Access Easement Area, together with sidewalks along at least one side of such extended Internal Road, all generally in accordance with the Site Plan attached hereto as Exhibit L and incorporated herein by reference. The extension of the Internal Road shall be constructed in accordance with plans and specifications approved by TAP Owner and Condo II Owner, such approval not to be unreasonably withheld, conditioned or delayed. From time to time, but not more than once per month, Condo II Owner shall submit to TAP Owner, Condo I Owner and Apartment Owner an invoice for the cost of the design and construction of the extension of the Internal Road incurred as of such date and for which TAP Owner, Condo I Owner and Apartment Owner have not previously reimbursed Condo II Owner, together with such reasonable backup as may be requested by such Owners. On or before the date that is fifteen (15) days after such submission, TAP Owner shall pay to Condo II Owner twenty-nine percent (29%) of such invoice, and Condo I Owner and Apartment Owner each shall pay to Condo II Owner such Owner's pro rata share of the remaining costs determined on the basis of an equitable division in accordance with the relative benefit to such Owner's tracts. Upon the completion of the extension of the Internal Road, the construction easement granted in this Section 3.1.2 shall automatically terminate and be of no further force or effect without any further action of any Owner.

3.1.3 Dedication of Internal Road. TAP Owner and Condo II Owner shall have the right, collectively, at any time to dedicate the Internal Road (and, consequently, the Water Line Easement Area (as hereinafter defined)) to the City of Atlanta, Georgia without obtaining any consent or approval of any of the other Owners. The Access Easement shall terminate automatically upon the Internal Road's dedication to, and acceptance by, the City of Atlanta, Georgia. The Access Easement shall, however, be in full force and effect at all times prior to such dedication. All Owners agree to cooperate with such dedication, and, if necessary, to join in such dedication

3.1.4 Use. The Access Easement may be used by the Owners, the owners of condominium units and other residents located on their respective properties, and, to the extent permitted by such Owner, owner or other resident, its respective agents, employees, contractors, licensees, invitees, lessees, customers, successors and assigns.

3.1.5 Cost. The cost of the operation, maintenance, repair and replacement of the Internal Road, until such time as it is dedicated to the City of Atlanta, Georgia, shall be governed by Article 6 of this Agreement.

3.2 Utility Easements. The Utility Easements Granted in this Agreement shall be governed by the provisions of Subsections 3.2.1 through 3.2.7.

3.2.1 Line 1 and 2 Sanitary Sewer Easement. Estates Owner hereby Grants to the Park Regency Owner a non-exclusive, perpetual easement in, upon, over, under, through and across a strip of land ten feet (10') in width, and which is more particularly described on Exhibit M, attached hereto and incorporated herein by reference (the "**Line 1 and 2 Sanitary Sewer Easement Area**"). The easement granted hereby, hereinafter called the "**Line 1 and 2 Sanitary Sewer Easement**", is given for the purpose of the construction, installation, use, operation,

maintenance, repair and replacement of sanitary sewer equipment and facilities to serve the Park Regency Tract together with all improvements now or hereafter located thereon, including the right to tap into, use, operate, maintain, repair and replace the existing sanitary sewer line and related equipment and facilities (the "**Line 1 and 2 Sewer Facilities**") located within the Line 1 and 2 Sanitary Sewer Easement Area. The Line 1 and 2 Sanitary Sewer Easement shall also include the right of the Estates Owner to use the Line 1 and 2 Sewer Facilities.

- (a) Dedication of Line 1 and 2 Sewer Facilities. Estates Owner shall have the right to dedicate the Line 1 and 2 Sewer Facilities to the City of Atlanta without obtaining any consent or approval of any other Owners. All Owners agree to cooperate with such dedication, and, if necessary, to join in such dedication]
- (b) Maintenance and Cost. The sanitary sewer line, equipment and related facilities located within the Line 1 and 2 Sanitary Sewer Easement Area shall be maintained, repaired and replaced as necessary by Estates Owner at its sole cost and expense; provided, however, that Park Regency Owner shall reimburse Estates Owner for fifty (50%) percent of the cost of such maintenance, repair and replacement. If Estates Owner shall fail to maintain, repair and replace the sanitary sewer line, equipment and related facilities located within the Line 1 and 2 Sanitary Sewer Easement Area, then Park Regency Owner shall have the right, but not the obligation, to enter upon the Estates Tract and to perform such maintenance, repair and/or replacement, in which event the Estates Owner shall reimburse Park Regency Owner for the cost of such maintenance, repair and/or replacement up to the percentage thereof for which Estates Owner is otherwise obligated pursuant to this paragraph.

3.2.2 Line 3 Sanitary Sewer Easement. Condo II Owner and Park Owner hereby Grant to TAP Owner, Estates Owner, Park Regency Owner, Condo I Owner, Condo II Owner, Apartment Owner and Single Family Owner a non-exclusive, perpetual easement in, upon, over, under, through and across a strip of land ten (10) feet in width, and which is more particularly described on Exhibit N, attached hereto and incorporated herein by reference, herein called the "**Line 3 Sanitary Sewer Easement Area**". The easement granted hereby, hereinafter called the "**Line 3 Sanitary Sewer Easement**", is given for the purpose of the use, operation, maintenance, repair and replacement of sanitary sewer equipment and facilities to serve the TAP Tract, Estates Tract, Park Regency Tract, Condo I Tract, Condo II Tract, Apartment Tract, Single-Family Tract, and Park Tract (the "**Line 3 Sewer Facilities**") including the right to tap into, use, operate, maintain, repair and replace the existing sanitary sewer line and related equipment and facilities located within the Line 3 Sanitary Sewer Easement Area and for purposes of the Line 3 Sewer Extension, the right of Condo I Owner and TAP Owner, as the case may be, to construct and install the Line 3 Sewer Extension.

- (a) Dedication of Line 3 Sewer Facilities. Condo II Owner and Park Owner shall have the right, collectively, to dedicate the Line 3 Sewer Facilities to the City of Atlanta without obtaining any consent or approval of any other Owners. All Owners agree to cooperate with such dedication, and, if necessary, to join in such dedication.

- (b) Construction and Cost. To the extent applicable, the cost of the installation, construction, operation, maintenance, repair and replacement of the Line 3 Sewer Facilities, and the installation, construction, operation, maintenance, repair and replacement of the Line 3 Sewer Facilities, shall be governed by Article 6 of this Agreement; provided, however, that (i) each Owner shall pay the cost associated with such Owner's tapping into the Line 3 Sewer Facilities and (ii) Condo I Owner and TAP Owner shall each pay an equal share, or fifty percent (50%), of the cost of extending the Line 3 Sewer Facilities to a more easterly location on Alexander Road (the "**Line 3 Sewer Extension**") for the purpose of providing service to the Condo I Tract and the TAP Tract in accordance with the Utilities Plan; provided further, however, that if Condo II Owner or Apartment Owner or both shall tap into the Line 3 Sewer Facilities on the Line 3 Sewer Extension, then Condo II Owner or Apartment Owner or both (as the case may be) shall pay a share of the cost equal to those of Condo I Owner and TAP Owner.

The Line 3 Sewer Extension shall be constructed by the first of Condo I Owner and TAP Owner to begin construction of improvements on its respective Tract and in accordance with the plans and specifications detailed in the Utilities Plan.

In the event Condo I Owner constructs the Line 3 Sewer Extension, from time to time, but not more than once per month, Condo I Owner shall submit to TAP Owner an invoice for fifty percent (50%) (or such lesser percentage as described immediately above) of the actual, out-of-pocket cost of the design and construction of the Line 3 Sewer Extension incurred as of such date and for which TAP Owner has not previously reimbursed Condo I Owner. TAP Owner and Condo I Owner hereby contemplate that Condo I Owner shall separately invoice any other Owner tapping into the Line 3 Sewer Extension for its equal share of the cost of the Line 3 Sewer Extension.

In the event TAP Owner constructs the Line 3 Sewer Extension, from time to time, but not more than once per month, TAP Owner shall submit to Condo I Owner an invoice for the actual, out-of-pocket cost of the design and construction of the Line 3 Sewer Extension incurred as of such date and for which Condo I Owner has not previously reimbursed TAP Owner. Condo I Owner shall pay to TAP Owner fifty percent (50%) (or such lesser percentage as described immediately above) of such invoice plus the percentage share allotted (as described immediately above), if any, to Condo II Owner or Apartment Owner or both. TAP Owner shall only look to Condo I Owner for such payment, provided the same is paid by Condo I Owner within the time period allotted hereunder.

Any such invoice submitted shall also include such reasonable backup as may be requested by the invoiced Owner. On or before the date that is fifteen (15) days after such submission, the invoiced Owner shall pay to submitting Owner the amount of such invoice, unless such invoice is being disputed in good faith by the invoiced Owner.



3.2.3 Park Regency Drainage Easement. Estates Owner hereby Grants to Park Regency Owner, a non-exclusive, perpetual easement in, upon, over, under, through and across a strip of land ten (10) feet in width, and which is more particularly described on Exhibit O, attached hereto and incorporated herein by reference, herein called the "**Park Regency Drainage Easement Area**". The easement granted hereby, hereinafter called the "**Park Regency Drainage Easement**" is given for the purpose of the construction, installation, use, operation, maintenance, repair and replacement of storm drainage equipment and facilities to serve the Park Regency Tract, hereinafter called the "**Park Regency Drainage Facilities**", including the right to tap into, use, operate, maintain, repair and replace the existing storm drainage line and related equipment and facilities located within the Park Regency/Estates Drainage Easement Area, as hereinafter defined, including, but not limited to, any and all storm drainage detention ponds, vaults or other related facilities located therein. The Park Regency/Estates Drainage Facilities and the Park Regency Drainage Facilities shall jointly serve the Park Regency Tract and the Estates Tract and shall be maintained, repaired and replaced as necessary by Estates Owner at its sole cost and expense; provided however, that Park Regency Owner shall reimburse Estates Owner for fifty (50%) percent of the cost of such maintenance, repair and replacement. If the Estates Owner shall fail to maintain, repair and replace the Park Regency/Estates Drainage Facilities and the Park Regency Drainage Facilities, then Park Regency Owner shall have the right, but not the obligation, to enter upon the Estates Tract and to perform such maintenance, repair and/or replacement, in which event Estates Owner shall reimburse Park Regency Owner for the cost of such maintenance, repair and/or replacement up to the percentage thereof for which Estates Owner is otherwise obligated pursuant to this paragraph.

3.2.4 Park Regency/Estates Drainage Easement. TAP Owner and Condo II Owner hereby Grant to Estates Owner and Park Regency Owner, a non-exclusive, temporary easement in, upon, over, under, through and across those portions of the TAP Tract and Condo II Tract which are described on Exhibit P, attached hereto and incorporated herein by reference, hereinafter called the "**Park Regency/Estates Drainage Easement Area**". The easement granted hereby, hereinafter called the "**Park Regency/Estates Drainage Easement**", is for the purpose of the operation, maintenance, repair and replacement of certain underground drainage facilities and detention pond, hereinafter called the "**Park Regency/Estates Drainage Facilities**", that transport storm and surface waters from the Estates Tract and Park Regency Tract to such detention pond. Notwithstanding the Easements granted in this Section 3.2.4, TAP Owner and Condo II Owner shall have the right to remove the Park Regency/Estates Drainage Facilities and construct, with Apartment Owner, the New Stormwater Drainage Facilities in lieu of the Park Regency/Estates Drainage Facilities, and at such time the New Stormwater Drainage Facilities have been constructed, the Easements granted under this Section 3.2.4 shall terminate *ipso facto* and shall be of no further force or effect.

3.2.5 New Stormwater Drainage Facilities and Stormwater Vault. TAP Owner, Condo II Owner and Apartment Owner hereby Grant to Park Regency Owner, Estates Owner, TAP Owner, Condo I Owner, Condo II Owner and Apartment Owner a non-exclusive, perpetual easement for the purpose of draining and discharging storm and surface waters from such Tracts through the stormwater drainage facilities (to include stormwater drainage lines and a stormwater detention vault) (collectively, the "**New Stormwater Drainage Facilities**") to be constructed by

Apartment Owner on the TAP Tract, Apartment Tract and Condo II Tract in accordance with the Drainage Plan.

- (a) Construction. TAP Owner, Condo I Owner, and Condo II Owner hereby Grant to Apartment Owner, as an appurtenance to the Apartment Tract, a temporary non-exclusive easement on, over and under the TAP Tract, Condo I Tract and Condo II Tract respectively, to construct the New Stormwater Drainage Facilities. The easement granted in this Section 3.2.5(a) shall automatically terminate and be of no further force or effect without any further action upon the completion of the New Stormwater Drainage Facilities.
- (b) Cost. Apartment Owner, Condo I Owner, Condo II Owner and TAP Owner shall be solely responsible for the cost of the construction and installation of the New Stormwater Drainage Facilities. From time to time, but not more than once per month, Apartment Owner shall submit to TAP Owner, Condo I Owner and Condo II Owner an invoice for the cost of the design and construction of the New Stormwater Drainage Facilities incurred as of such date and for which TAP Owner, Condo I Owner and Condo II Owner have not previously reimbursed Apartment Owner, together with such reasonable backup as may be requested by such Owners. On or before the date that is fifteen (15) days after such submission, TAP Owner shall pay to Apartment Owner TAP Owner's pro rata share determined on an acreage basis (twenty-one percent (21%)) of such invoice, and Condo I Owner and Condo II Owner each shall pay to Apartment Owner such Owner's pro rata share of the remaining costs determined on the basis of an equitable division in accordance with the relative benefit to such Owner's tracts. After such time as the New Stormwater Drainage Facilities are completed, their operation, maintenance, repair and replacement, and the cost of their operation, maintenance, repair and replacement, shall be governed by Article 6 of this Agreement.

3.2.6 Water Line Easement. TAP Owner hereby Grants to the other Owners a non-exclusive, perpetual easement in, upon, over, under, through and across the property described on Exhibit Q, attached hereto and incorporated herein by reference, (the "**Water Line Easement Area**"). The easement granted hereby, hereinafter called the "**Water Line Easement**", is granted for the purpose of the construction, installation, use, operation, maintenance, repair and replacement of a water line and related equipment and facilities to serve the Tracts, hereinafter called the "**Water Line Facilities**", including the right to tap into, use, operate, maintain, repair and replace the existing water line and related equipment and facilities located within the Water Line Easement Area. The Easement granted herein shall include the right to construct, use, maintain, repair and replace one or more lines under the Internal Road to tap into the Water Line Facilities.

- (a) Cost. The cost of the operation, maintenance, repair and replacement of the Water Line Facilities, until such time as they are dedicated to the City of Atlanta, Georgia, shall be governed by Article 6 of this Agreement.

- (b) Dedication. If required by the City of Atlanta in connection with the development of the TAP Tract, the Condo I Tract, the Condo II Tract, the Apartment Tract, the Single-Family Tract, or the Park Tract, TAP Owner shall have the right to dedicate the Water Line Easement to the City of Atlanta, Georgia. All Owners agree to cooperate with such dedication, and if necessary, to join in such dedication.

3.2.7 Internal Road Utilities. As to Utilities installed or to be installed upon the Estates Tract, the Park Regency Tract, the TAP Tract, the Condo I Tract, the Condo II Tract, the Apartment Tract, and the Single-Family Tract subsequent to the date of this Agreement, TAP Owner and Condo II Owner hereby Grant to all the Owners a non-exclusive, perpetual easement in, upon, over, under, through and across the Internal Road, as it may exist from time to time, for the installation, maintenance, repair, replacement and use of Utilities.

3.3 Park Easements. The Park Easements Granted in this Agreement shall be governed by the provisions of Subsections 3.3.1 through 3.3.3.

3.3.1 Park Access Easement. Park Owner hereby Grants to NBCA, Estates Owner, Park Regency Owner, TAP Owner, Condo I Owner, Condo II Owner, Apartment Owner, and Single-Family Owner a non-exclusive, perpetual easement for the purpose of providing pedestrian access, ingress and egress in, upon, over, through and across all paved portions of the Park Tract, as may exist from time to time. The easement granted hereby is hereinafter called the "**Park Access Easement**". The Park Access Easement may be exercised by the Owners, the owners of condominium units located on their respective properties, the members of the NBCA, and, to the extent permitted by any Owner or owner or member of the NBCA, its respective lessees, but in all events the exercise of the Park Access Easement shall be subject to the rules and regulations established pursuant to Subsection 3.3.3 below.

3.3.2 Park Use Easement. Park Owner hereby Grants to NBCA, Estates Owner, Park Regency Owner, TAP Owner, Condo I Owner, Condo II Owner, Apartment Owner, and Single-Family Owner a non-exclusive, perpetual easement for the purpose of recreational use in, upon, over, through and across the Park Tract. The easement granted hereby is hereinafter called the "**Park Use Easement**". The Park Use Easement may be exercised by the Owners, the owners of condominium units located on their respective properties, the members of the NBCA, and, to the extent permitted by any Owner or owner or member of the NBCA, its respective lessees, but in all events the exercise of the Park Access Easement shall be subject to the rules and regulations established pursuant to Subsection 3.3.3 below.

3.3.3 Rules and Regulations. Park Owner may establish rules and regulations from time to time to govern hours of operation, permitted uses, noise and other details concerning the use and operation of the Park Property.

3.3.4 Design and Costs. Apartment Owner and TAP Owner shall be solely responsible for the construction and installation of the improvements to be located on the Park Tract and all costs related thereto. Such improvements shall be constructed in accordance with plans and specifications provided by Apartment Owner and approved by TAP Owner, such approval not to be unreasonably withheld, conditioned or delayed. From time to time, but not

more than once per month, Apartment Owner shall submit to TAP Owner an invoice for the cost of the design and construction of the Park incurred as of such date and for which TAP Owner has not previously reimbursed Apartment Owner, together with such reasonable backup as may be requested by TAP Owner. On or before the date that is fifteen (15) days after such submission, TAP Owner shall pay to Apartment Owner twenty-one percent (21%) of such invoice. After such time as the Park Tract improvements are completed, the operation, maintenance, repair and replacement of the Park Tract and the improvements located thereon, which shall include (without limitation) all paving, sidewalks, drainage improvements, grassing, landscaping and landscape irrigation systems, lighting, and benches located on the Park Tract and all other improvements necessary or desirable for the use and operation of the Park Tract, shall be governed by Article 6 of this Agreement.

**3.3.5 Terminability of Park Regency Owner's Rights to Park Use Easement and Park Access Easement.** Park Regency Owner shall have until the date which is one-hundred twenty (120) days after its receipt of an estimated yearly operation, maintenance, repair and replacement budget and design for the Park to notify in writing Park Owner and Apartment Owner that Park Regency wishes to terminate its rights to the Park Access Easement and Park Use Easement. If such notice is received by Park Owner and Apartment Owner within the time allotted hereunder, then (i) the Easements granted Park Regency under Sections 3.3.1 and 3.3.2 shall terminate *ipso facto* and shall be of no further force or effect, (ii) Park Regency will be exempted from paying the Park Regency Percentage Share with regard to any Common Area Maintenance Expenses relating to the Park, and (iii) the other Owners shall each pay the Park Regency Percentage Share with regard to such costs in accordance with their respective Percentage Shares.

**3.4 Landscape Easement.** Park Regency Owner hereby Grants to Estates Owner a non-exclusive, permanent easement, in, upon, over, under, through and across the property described on Exhibit R, attached hereto and incorporated herein by reference, consisting of a strip of land approximately ten (10) feet in width with the northwestern boundary of such strip being a portion of the northwestern property line of the Park Regency Tract, hereinafter called the "**Landscape Easement Area**". The easement granted hereby, hereinafter called the "**Landscape Easement**", is granted so that Estates Owner may, at its expense, maintain and periodically, at the option of Estates Owner, re-landscape the Landscape Easement Area in keeping with the appearance and landscaping of the Estates Tract. All work performed by Estates Owner in connection with the Landscape Easement shall be performed in a good and workmanlike manner, but nothing herein obligates Estates Owner to perform work in the Landscape Easement.

**3.5 General Conditions of Easements.** By its acceptance hereof, the Owners agree as follows with respect to the Easements created hereby:

**3.5.1 Owners' Indemnity.** Subject to the provisions of Section 8.4 and Subsection 3.5.2(c), each Owner (the "**Indemnifying Owner**") shall, at its sole cost and expense, indemnify, defend and hold harmless each other Owner, its direct or indirect constituent entities, and such Owner's and constituent entities' directors, officers, employees and agents (each, an "**Indemnitee**") from and against any and all claims, losses, liabilities, damages, judgments, fines and costs and expenses (including, without limitation, any and all costs, reasonable attorneys'

fees, expenses and liabilities incurred with respect to any such action or proceeding arising therefrom) incurred by the Indemnitee in connection with or arising from the Indemnifying Owner's use, possession or management of the Indemnifying Owner's Tract or activities thereon or therein, including, without limitation, construction activities, or in connection with or arising out of the Indemnifying Owner's (or any person or entity acting by, through, or on behalf of the Indemnifying Owner) use, exercise or enjoyment of any Easement or other right appurtenant to and benefiting the Indemnifying Owner's Tract, including, without limitation, construction activities, unless caused by the gross negligence or willful misconduct of the Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any matter for which the Indemnitee is to be indemnified hereunder, the Indemnifying Owner, upon notice from the Indemnitee, shall resist or defend such action or proceeding with attorneys reasonably satisfactory to the Indemnitee.

3.5.2 Required Insurance. At all times during the term of this Agreement, each Owner shall purchase or cause to be purchased with respect to its entire Tract and the Improvements thereon separate and individual liability insurance provided that such policies purchased by or on behalf of such Owner shall comply with requirements contained in Exhibit S, attached hereto and incorporated herein by reference, with respect to such Owner's Tract. For the avoidance of doubt, each Owner's obligation to purchase or cause to be purchased separate and individual liability insurance under this section shall not include any obligation to purchase or cause to be purchased insurance with respect to any Easement areas that are not located on such Owner's Tract.

- (a) "Other Insurance" Provision. Each policy of liability insurance under this Section 3.5.2 shall include, if available, an "other insurance provision" by the insurance company providing coverage under such policy to the effect that if there are two or more separate and individual policies potentially covering any claim or loss and there is any dispute between the insurance companies providing coverage under such policies over which policy or policies should pay any claim or loss, such insurance companies shall pay such claim or loss according to common insurance industry practice as provided in the "other insurance clauses" of such policies, and such coverage shall be in excess of any other insurance maintained with respect to such claim or loss.
- (b) Compliance With Insurance Requirements; Payment Of Premiums. Each Owner shall comply with all rules, regulations and requirements of any insurance rating bureau having jurisdiction over its Tract or any portion thereof or the requirements of any insurance policy affecting insurance coverage on any other Owner's Tract if noncompliance by it with respect to its Tract or any portion thereof would: (i) increase the premiums of any policy of insurance maintained by an other Owner; (ii) render the other Owner's Tract partly or wholly uninsurable; or (iii) create a valid defense to the other Owner's right to collect the proceeds under policies insuring such other Owner's Project; provided, further, however, that if such compliance is hereafter required solely because of the nature of the use, possession or management of or activities in the other Owner's Tract, such other Owner shall be liable for the cost and expense of such compliance.

- (c) Mutual Release; Waiver of Subrogation. Each Owner (the “Releasing Owner”) hereby waives and releases (for itself, and to the extent legally possible for it to do so, on behalf of its insurer) any and every claim for recovery from any other Owner (the “Released Owner”) and such Released Owner’s direct or indirect constituent entities, such Released Owner’s and constituent entities’ directors, officers, employees and agents, for any loss or damage to any or all property located on the Releasing Owner’s Tract, which loss or damage is insurable, irrespective of any negligence on the part of the released Person which may have contributed to or caused such loss or damage. Each Owner covenants that it will, if generally available in the insurance industry, obtain for the benefit of the other Owners a waiver of any right of subrogation which the insurer of such Releasing Owner may acquire against the Released Owner by virtue of the payment of any such loss covered by such insurance.

If despite using commercially reasonable efforts an Owner (the “insuring Owner”) is unable to obtain a waiver of the right of subrogation from its insurer(s) for the benefit of the other Owners (collectively, the “other Owners”), then the insuring Owner shall promptly give written notice to the other Owners of such fact, and during any period of time when such waiver is unobtainable, the insuring Owner shall not have been deemed to have released any subrogated claim of its insurance carrier against the other Owners, and during the same period of time the other Owners shall be deemed not to have released the insuring Owner from any claims they or their insurance carrier may assert which otherwise would have been released pursuant to this Subsection 3.5.2(c).

3.5.3 Reservation of Surface Rights. Each Owner of a Tract on which an Easement is located reserves unto itself, as applicable, the right and privilege to use and occupy the surface of all of portions of the Easement in all manners which are consistent with the use of the Easement granted hereby, including, but not limited to, landscaping, grading, paving and construction of Improvements.

3.5.4 Relocation. An Owner may relocate any such Utilities, lines, common drainage facilities or easement areas located on its Tract pursuant to the Easements granted in Section 3.2; provided, however, that (i) any such relocation of any such Utilities, lines, drainage facilities or easement areas located on its Tract will be at the sole cost and expense of such relocating Owner, (ii) the use of any such Utilities, lines, common drainage facilities or easement areas on its Tract by any other Owner with rights thereto will not be limited or interrupted by any such relocation, and (iii) the present or future use of any such relocated Utilities, lines, drainage facilities or easement areas by any Owner with rights thereto shall not be limited in volume or concentration to amounts or levels that are less than that of any such Utilities, lines, common drainage facilities or easement areas existing prior to the relocation. Upon relocation of any easement area pursuant to this Subsection 3.5.4, the boundaries of such easement area, as relocated, shall *ipso facto* replace the description of the easement area set forth herein. For purposes of this Subsection 3.5.4 “common drainage facilities” means drainage facilities used by more than one (1) Owner.

3.5.5 Work. All work performed by an Owner in connection with any Easement or the use of any Easement granted hereby shall be performed in a good and workmanlike manner, but nothing herein obligates any Owner to perform any work on any Easement or for the use of any Easement. All work by an Owner shall be done with as little disruption to the Owner of the Tract on which the work is being done as is reasonably practicable, and any portions of a Tract affected by the exercise of such rights shall be restored to substantially the same condition as existed prior to the exercise of such rights at the sole cost and expense of the Owner performing the work.

3.5.6 Amendment to Agreement. The Owners acknowledge and agree that as soon as reasonably possible after completion of the extension of the Internal Road, the installation of the New Stormwater Drainage Facilities, and construction on the TAP Tract, Condo I Tract, Condo II Tract, Apartment Tract, Single-Family Tract and Park Tract, each Owner, respectively, shall cause, at no cost to an other Owner, an "as-built" survey to be made of its property, such survey to contain metes and bounds descriptions of all easement areas contemplated herein. At such time as any such survey has been completed, the Owners agree to promptly amend this Agreement to replace the description of any easement area set forth herein with the metes and bounds description derived from such survey or surveys.

#### ARTICLE IV Association

4.1 Establishment of the Association. Within sixty (60) days after the date hereof, TAP shall establish the Association as an association of all of the Owners in accordance with the provisions of the Georgia Nonprofit Corporation Code, as then in effect, and each Owner, by executing this Agreement or by accepting a deed to any Tract or portion thereof, shall thereby be deemed to have consented to join and to be bound by the rules and regulations of the Association. At such time as the Association shall have been formed according to this Section 4.1, TAP shall promptly delegate and assign to the Association, and the Association shall assume, the rights, powers, duties, and obligations of the Association as herein provided in Section 4.2. Until the Association is established and the rights, powers, duties, and obligations provided hereunder are so delegated and assigned to it by TAP, all rights, powers, duties, and obligations of the Association described in this Agreement shall be exercised by TAP, as provided in Article IX hereof.

4.2 Duties and Powers of the Association. The Association, acting through its Board of Directors and officers, shall have such duties and shall exercise such powers as are set forth in the Georgia Nonprofit Corporation Code, the Articles of Incorporation, this Agreement, and the By-Laws. The Association may exercise any other right or privilege that may be reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effect any such right or privilege. If there are conflicts or inconsistencies between the Georgia Nonprofit Corporation Code, this Agreement, the Articles of Incorporation, or the By-Laws, the provisions of the Georgia Nonprofit Corporation Code, as may be applicable, this Agreement, the Articles of Incorporation, and the By-Laws, in that order, shall prevail, and each Owner of a Tract, by acceptance of this Agreement or a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The following describe, by way of illustration and not limitation, some of the general powers to

be exercised by the Association upon the delegation and assignment specified in Section 4.1 hereof:

4.2.1 Common Areas. The Association, subject to the rights and duties of the Owners set forth in this Agreement, shall be responsible for the maintenance, operation, repair and replacement of the Common Areas (as defined in Section 5.2). The Association shall keep the same in a first-class, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof. The Association's powers, duties, and rights with respect to the Common Areas shall at all times be subject and subordinate to the rights, Easements, and privileges Granted by the parties hereunder. The Association shall have the power to hold title to property provided the property held by the Association is designated part of the Common Areas and used for the common benefit of the Owners.

4.2.2 Services. The Association shall be authorized to provide services for (i) the cleanup, maintenance, repair, and replacement of the Common Areas, (ii) landscaping of the Common Areas, (iii) lighting of the Common Areas, and (iv) security of the Common Areas. The Association shall also be authorized to arrange with governmental agencies, public utilities, or others, as a Common Area Maintenance Expense of the Association, to furnish trash collection and utility services for the Common Areas. In the event that any services are provided or contracted for by the Association, as a matter of administrative convenience or economies of scale, with respect to any portion of any Tract which is not a Common Area, the cost of such service (or, as the case may be, the share of such cost incurred with respect to such Tract) shall not be a Common Expense and shall be paid by the Owner of such Tract. Where any such service is provided to the Owners of more than one Tract, or where any such service is provided both to Common Areas and portions of any Tract which are not Common Areas, the cost of such service shall be apportioned among the recipients of such services (including, if applicable, the Association) on an equitable basis.

4.2.3 Enforcement. The Association shall be authorized to take any and all actions, including actions hereinafter described, necessary or appropriate to enforce the covenants and restrictions of this Agreement and other agreements to which the Association is a party and which affect the maintenance of the Common Areas.

4.2.4 Assessment. The Association shall be authorized to assess its Members as provided in Article VI hereof to fund the Common Area Maintenance Expenses of the Association.

4.2.5 Insurance. The Association shall be authorized to obtain and maintain in full force and effect such insurance policies insuring such Persons as insureds thereunder against such losses or risks of loss, and at such limits of coverage, as the Board of Directors, in its unfettered discretion, shall deem necessary or appropriate. By way of illustration and not limitation, the Association shall be authorized to obtain and maintain policies providing comprehensive general liability, property damage, flood damage and directors' and offices' liability insurance coverage naming the Association and each of the Owners as insureds thereunder.



The Association shall carry out or offer the functions and services specified in this Section 4.2 to the extent the Association has funds available to it from assessments collected pursuant to Article VI hereof, provided, however, that the manner in which such funds are expended for such functions or services, and the amount of such expenses for any particular function or service, shall be within the sole discretion of the Association; and, to the extent that funds are not available to the Association from assessments collected pursuant to Article VI, the Association shall have no duty or obligation to carry out or offer the functions or services specified in this Section 4.2. The functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association, the needs of the Owners, and such other matters as the Board shall consider appropriate.

4.3 **Membership in Association.** Every Owner (with the exception of Park Owner) shall be a Member of the Association. There shall be two (2) types of membership in the Association:

4.3.1 **Type A Members:** Type A Members shall include all Owners (with the exception of Park Owner); provided, however, that so long as TAP initially is a Type B Member, TAP shall not be entitled to Type A Membership; provided further, however, that at such time as Apartment Owner becomes a Type B Member, Apartment Owner shall cease to be a Type A Member.

4.3.2 **Type B Members:** Initially, the sole Type B Member shall be TAP. TAP's Type B Membership shall cease, and Apartment Owner shall *ipso facto* become the Type B Member at such time TAP conveys, either directly or indirectly, all or any portion of its interest in the TAP Tract. At such time, the rights, obligations and duties of TAP as Type B Member under this Agreement shall be assumed by Apartment Owner in writing, and notice of such assignment and assumption, together with a copy of the instrument of assumption, shall be delivered to the Owners and to any holder of a deed to secure debt or similar instrument now or hereafter encumbering any of the Tracts, provided that TAP has been given notice in accordance with Article IX of this Agreement of the name and address of such holder. At such time as Apartment Owner becomes the Type B Member, Apartment Owner shall have all the rights of the Type B Member, and Apartment Owner and the Apartment Tract shall be solely responsible for all of the obligations, duties and claims of the Type B Member hereunder arising from and after the date of such assignment and assumption (except for the TAP Owner Percentage Share, the obligation and duty of which will be assumed by the successor-in-title to the TAP Tract who shall also become a Type A Member) and, the other Owners shall release the balance of the TAP Tract and the Owner or Owners thereof from any obligation, duty, liability, responsibility, claim or demand (including, without limitation, reimbursement or lien claims) incurred by TAP in its capacity as the Type B Member of the Association (provided the Owners shall have received notice and a copy of the assumption instrument as provided above), except for reimbursement or lien claims arising hereunder prior to the date of such assignment and assumption. Notwithstanding anything herein to the contrary, at such time as TAP's Type B Membership ceases to exist, TAP Owner shall become a Type A Member. Except in connection with the sale of all or any portion of the TAP Tract, TAP may not assign its rights as the Type B Member, and any attempted assignment or transfer in contravention of this provision shall be null and void ab initio and of no force or effect whatsoever.

4.4 **Voting Rights of Members.** Voting rights of Members are as follows:

4.4.1 Each Type A Member shall be entitled to a single vote with regard to matters submitted to the Members for a vote. Each Type A Member owning an entire Tract in fee simple shall be entitled to cast the vote for such Tract. When more than one Person is the Owner of a particular Tract, each such Person shall not be entitled to a separate vote derived from such Tract, but, the Owner Agent of such Tract shall be entitled to cast the vote for such Tract. For the avoidance of doubt, the Owners hereby acknowledge that the Park Owner shall not be entitled to cast any vote on any matter.

4.4.2 The Type B Member shall be entitled to a single vote with regard to matters submitted to the Members for a vote.

4.4.3 Votes of Type A Members and the Type B Members shall be commingled and aggregated for purposes of determining whether a quorum exists for any meeting of the Association or for purposes of determining the outcome of any matter put to a vote of Members of the Association. Any matter put to a vote of Members of the Association shall be decided by the vote of five of the seven total Members in the Association.

4.4.4 The Apartment Owner shall cast the votes for the Condo I Tract, the Condo II Tract and the Single Family Tract on behalf of the Owners of such Tracts until any such Owner shall otherwise notify the Association.

4.5 **Board of Directors.** Except to the extent otherwise specifically and expressly required by the Georgia Nonprofit Corporation Code, this Agreement, the Articles of Incorporation, or the By-Laws, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors, acting through the officers of the Association without any further consent or action on the part of the Members; and all agreements and determinations lawfully authorized by the Board of Directors shall be binding on the Association. Directors shall be elected at meetings of Members of the Association as follows: seven (7) Directors shall be elected, with one (1) Director being elected for each Tract (with the exception of the Park Tract), and the Owner or Owners of each such Tract shall elect the Director attributable to such Tract. An Owner may elect a Director that has been elected to represent another Tract, and in such event such Director shall have the number of votes equal to the number of Owners such Director represents. Any replacement of a Director shall be elected by the Owner or Owners who elected the Director being replaced. The election and term of office of Directors shall otherwise be as provided in the By-Laws of the Association. Any matter put to a vote of the Directors of the Association shall be decided by the vote of five of the seven total Directors of the Association.

4.6 **Meetings.** All matters concerning meetings, and notice of meetings, of the Association and its Board of Directors shall be as specified in the By-Laws, as the same may be amended from time to time.

4.7 **Delegation to Manager.** In performing its responsibilities hereunder, the Association, through its Board of Directors and officers, shall have the authority to delegate to qualified Persons of its choice (including, without limitation, TAP or any subsequent successor

as Type B Member to TAP) to perform such duties of the Association as may be determined by the Board of Directors.

4.8 **Legal and Accounting Services.** The Association may pay, as a Common Area Maintenance Expense, for such legal and accounting services as are necessary or desirable in connection with the conduct of the business and affairs of the Association or the enforcement by the Association of this Agreement, the By-Laws, or the published rules and regulations of the Association.

4.9 **Ownership of Assets.** All property acquired or funds received by the Association shall be held by the Association for the benefit of the Members as herein provided and for the purposes herein stated. The shares of the Members in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Tract also transfers the membership in the Association which is an appurtenance to such Tract.

4.10 **Exculpation and Indemnity of Directors and Officers.** The directors and officers of the Association shall not be liable for any mistake of judgment, whether negligent or otherwise, except for their own individual willful misfeasance or malfeasance, willful misconduct, gross negligence or bad faith. Such directors and officers shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such directors or officers may also be Members of the Association and therefore subject to assessment under this Agreement) and the Association, as a Common Area Maintenance Expense of the Association, shall indemnify such directors and officers against, and hold, save and defend such directors and officers free and harmless from any and all expense, loss, or liability to others on account of any such contract or commitment. In addition, each director and each officer of the Association shall be indemnified and held harmless by the Association, as a Common Area Maintenance Expense of the Association, from any expense, loss, or liability to others by reason of having served as such director or as such officer, and against all expenses, losses, and liabilities, including court costs and reasonable attorneys' fees, incurred by or imposed upon such director or officer in connection with any proceeding to which he may be a party or have become involved by reason of being such director or such officer, whether or not he is a director or officer at the time such expenses, losses or liabilities are incurred, except in cases wherein the expenses, losses and liabilities arise from a proceeding in which such director or such officer is adjudicated guilty of willful misfeasance or malfeasance, willful misconduct, gross negligence or bad faith in the performance of his duties. In the event of a settlement of any such proceeding, the indemnification provided hereby shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interests of the Association. Any right to indemnification provided for herein shall not be exclusive of any other rights to which a director or officer, or former director or officer, may be entitled.

4.11 **Directors' and Officers' Insurance.** The Association shall purchase and maintain, as a Common Area Maintenance Expense, directors' and officers' insurance on behalf of any person who is or was a director or officer of the Association against any liability asserted against him or her and incurred by him or her in such capacity, or arising out of his or her status as such.

4.12 **No Compensation**. No director or officer of the Association shall receive any fee or compensation for services performed by him or her.

## **ARTICLE V**

### **Maintenance**

5.1 **Owner's Responsibilities**. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of a Tract, together with all Improvements thereon, shall be the responsibility of the Owner of such Tract. Each Owner shall keep its Tract and all Improvements in good working order and repair and all landscaping in a first-class, clean, attractive and sanitary condition, including but not limited to, painting and repairing Improvements, seeding, watering and mowing lawns, plantings pruning and cutting trees and shrubbery, and other appropriate external care of all land, landscaping and improvements, all in a manner consistent with first-class property management. Each Owner shall make diligent efforts to prevent and promptly correct any unclean or unsightly conditions on its Tract.

5.2 **Designation of Common Areas**. For purposes of setting forth those items for which the Association is responsible, "Common Areas" shall mean the areas hereby designated by TAP Owner, Apartment Owner, and Park Owner as follows:

5.2.1 the Internal Road, which shall include (without limitation) all paving, sidewalks, curbs, gutters, drainage and detention ponds and vaults and facilities and other drainage improvements contained in or associated with those portions of Internal Road contained in the Access Easement Area, all grassing, landscaping and landscape irrigation systems within and along the boundaries of those portions of Internal Road contained in the Access Easement Area and all street lights, traffic lights, directional signs and other traffic control systems and facilities necessary or desirable for the use and operation of those portions of Internal Road contained in the Access Easement Area;

5.2.2 the Water Line Facilities;

5.2.3 the Park, which shall include (without limitation) all paving, sidewalks, drainage improvements, grassing, landscaping and landscape irrigation systems, lighting, benches and all other improvements necessary or desirable for the use and operation of the Park;

5.2.4 the Line 3 Sewer Facilities (as such facilities are to be expanded pursuant to the Line 3 Sewer Extension); and

5.2.5 the New Stormwater Drainage Facilities (upon their completion).

5.3 **Ownership of the Internal Road**. At such time as TAP conveys, either directly or indirectly, all or any portion of its interest in the TAP Tract to a third party, TAP shall convey at Apartment Owner's direction that portion of the Internal Road comprising Parcel 2 of the TAP Tract to Apartment Owner's designee at no cost or expense to Apartment Owner or Apartment Owner's designee.

5.4 **Association's Responsibilities.** The Association shall have the following responsibilities with respect to the maintenance of the Common Areas:

5.4.1 Except for damage by casualty and condemnation and as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas in a condition at least comparable to the level of maintenance with respect to comparable real estate developments in the Atlanta, Georgia metropolitan area. The Association's responsibilities with respect to the Common Areas shall be deemed to include the maintenance, repair and replacement of all roads, driveways, walks, bicycle paths, parking areas, buildings, utility lines, pipes, plumbing, wires, conduits, systems, plantings, and landscaping constructed, installed, or planted by TAP Owner, Condo I Owner, Condo II Owner, Apartment Owner, Park Owner, or the Association within the Common Areas.

5.4.2 The Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner that might be stored or placed in or upon any portion of the Common Areas.

5.4.3 The Association shall not be obligated to take any action hereunder with regard to the maintenance, repair and replacement of Improvements in the Common Areas to the extent that the cost thereof exceeds the funds available to the Association pursuant to its assessing powers under Article VI hereof to pay such costs.

5.4.4 No diminution or abatement of assessments shall be claimed or allowed by any Owner by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Agreement, or for inconvenience or discomfort arising from the making of improvements or repairs that are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, order or directive of any municipal or other governmental authority, the obligation to pay such assessments being a separate and independent covenant on the part of each Owner.

5.4.5 The Association shall purchase and maintain, as a Common Area Maintenance Expense, the insurance Park Owner is required to purchase and maintain pursuant to Section 3.5.2.

## ARTICLE VI

### Assessments

6.1 **Covenant to Pay Assessments.** Each Owner of a Tract, by acceptance of this Agreement or a deed therefor, whether or not it shall be so expressed in such deed, is thereby deemed to covenant and agree to pay to the Association assessments, such assessments to be established and collected as provided in Section 6.6 hereof and individual or specific assessments against any particular Tract that are established pursuant to the terms of this Agreement including, but not limited to, fines as may be imposed against such Tract in accordance with Article VIII hereof. All assessments hereunder are subject to the provisions of Section 6.6. All funds of the Association shall be kept in a segregated account or accounts.

6.2 **Purpose of Assessments.** Assessments shall be levied by the Association for the improvement, maintenance, operation, repair and replacement of the Common Areas and Improvements located thereon and related items as more fully detailed in Section 6.4.

6.3 **Assessments.** It shall be the duty of the Board of Directors to keep a record of all reasonable, out-of-pocket costs and expenses for the maintenance, repair and replacement, utilities, taxes and assessments, and insurance for or with respect to the Common Areas, to the extent fairly allocated to the Common Areas at issue (all of such costs and expenses being collectively, the "**Common Area Maintenance Expenses**", as further defined in Section 6.4) which are actually incurred by the Association and paid by the Association to unrelated third parties or, if paid to related parties, which do not exceed a competitive market price therefor. The Association shall invoice the Members periodically as determined by the Association (but no more frequently than monthly and no less often than annually) for their Percentage Share, hereinafter defined, of actual Common Area Maintenance Expenses previously paid by the Association or invoiced by the Association with payment due.

6.4 **Common Area Maintenance Expenses Defined.** The Common Area Maintenance Expenses of the Association to be funded by the assessments may include, but shall not necessarily be limited to, reasonable, out-of-pocket costs for the following:

6.4.1 The expenses of maintenance, operation, repair, and replacement of the Common Areas, including, without limitation costs of labor, equipment and materials incurred in connection therewith;

6.4.2 Utility charges for utilities serving the Common Areas and/or operation of Common Areas lighting and amenities provided as part of or within the Common Areas, and charges for other common services for the Common Areas, including, without limitation, landscaping, landscape maintenance, trash collection, security services and traffic control (but excluding charges for services provided within the boundaries of any Tract or, where the charge for a particular service is not apportioned [although upon the written request of an Owner the Association will request such apportionment] by the party providing such service between service provided within boundaries of Tracts and service provided in the Common Areas, excluding an equitable portion of the charge for such services)

6.4.3 Ad valorem real and personal property taxes assessed against the portions of the Common Areas (including any improvements thereon) owned by the Association, TAP Owner, Condo II Owner or Park Owner, as the case may be, and the Association shall, to the extent of funds available for such purpose, pay such taxes in a timely manner;

6.4.4 Premiums for comprehensive general liability, property damage, directors' and officers', and any other insurance that is required to be maintained by the Association hereunder or that the Board of Directors may from time to time approve;

6.4.5 Such other actual expenses relating to the Common Areas as may be determined from time to time by Board of Directors of the Association to be Common Area Maintenance Expenses, including, without limitation, taxes, utility charges and governmental charges not separately assessed against Tracts.

6.4.6 Notwithstanding anything contained to the contrary, for purposes of this Agreement, Common Area Maintenance Expenses shall not, without the consent of all Members of the Association include the costs of original acquisition, construction or installation of any Common Areas, except that Common Area Maintenance Expenses may include costs of acquisition and installation from time to time of seasonal plantings in any of the landscaped areas included in the Common Areas. Further, Common Area Maintenance Expenses shall not include the cost of enlarging or extending the Internal Road, or expanding the capacity of the Water Line Facilities or the cost of repair or replacement of the Internal Road or Water Line Facilities attributable to an expanded use.

6.5 **Date of Commencement of Assessments.** The assessments provided for herein shall commence as to all Tracts on, and shall not accrue or be incurred before, the effective date of this Agreement

6.6 **Allocation of Assessments.** The Percentage Share of the total assessments levied by the Association for any year that shall be attributable to a Tract shall be as assigned hereinafter and the Percentage Share shall remain in effect with respect to such Tract unless and until such Percentage Share is adjusted as hereinafter provided. Assessments shall be levied against Tracts on the following basis:

6.6.1 **TAP Owner Percentage Share.** The Percentage Share of the TAP Tract shall be seventeen and twenty-two hundredths percent (17.22 %) (the "**TAP Owner Percentage Share**"). [183 Units]

6.6.2 **Estates Owner Percentage Share.** The Percentage Share of the Estates Tract shall be twenty-two percent (22 %) (the "**Estates Owner Percentage Share**"). [234 units]

6.6.3 **Park Regency Owner Percentage Share.** The Percentage Share of the Park Regency Tract shall be thirteen and nineteen hundredths percent (13.19 %) (the "**Park Regency Owner Percentage Share**"). [140 Units]

6.6.4 **Condo I Owner Percentage Share.** The Percentage Share of the Condo I Tract shall be eighteen and eighty-one hundredths percent (18.81 %) (the "**Condo I Owner Percentage Share**"). [200 Units]

6.6.5 **Condo II Owner Percentage Share.** The Percentage Share of the Condo II Tract shall be fourteen and eleven hundredths percent (14.11 %) (the "**Condo II Owner Percentage Share**"). [150 Units]

6.6.6 **Apartment Owner Percentage Share.** The Percentage Share of the Apartment Tract shall be fourteen and eleven hundredths percent (14.11 %) (the "**Apartment Owner Percentage Share**"). [150 Units]

6.6.7 **Single-Family Owner Percentage Share.** The Percentage Share of the Single-Family Tract shall be fifty-six hundredths percent (.56 %) (the "**Single-Family Owner Percentage Share**"). [6 Units]

The Owners acknowledge and agree that as soon as reasonably possible after the completion of construction of each of the improvements on the TAP Tract, Condo I Tract, Condo II Tract, Apartment Tract and Single-Family Tract the Owners will promptly amend this Agreement to reallocate the Percentage Share for each Tract based on the as-built unit density of such completed construction.

6.7 **Members Rights to Review Assessments.** Upon written request by any Owner, the Association shall promptly deliver to such requesting party copies of appropriate documents, invoices, receipts and other information substantiating the incurring and payment of such Common Area Maintenance Expenses which are the subject of any such invoice. From time to time, but no more often than one (1) time per calendar year, any Owner upon reasonable prior notice and during normal business hours, may, at such Owner's sole cost and expense, inspect, audit and copy pertinent books and records of the Association regarding Common Area Maintenance Expenses.

6.8 **Payment Certificates.** The Association shall upon demand at any time from an Owner, furnish such Owner a written certificate stating the type and amount of assessment for which such Owner is liable and whether said assessments have been paid in full. Such a certificate shall be conclusive evidence, against all but such Owner, of the payment of any assessment therein stated to have been paid.

6.9 **Operating Budget.** No later than sixty (60) days after the date of this Agreement, TAP or, after delegation and assignment of the obligations of TAP hereunder to the Association pursuant to Section 4.1, the Association shall prepare and submit to the Owners for their approval a proposed operating budget for the Association and Common Area Maintenance Expenses for the period from the date of this Agreement through the then calendar year, and thereafter TAP or the Association, as the case may be, shall prepare and submit to the Owners for their approval an operating budget for the next succeeding calendar year at least sixty (60) days before such calendar year commences. Each proposed operating budget shall contain a budget containing good faith estimates of the Common Area Maintenance Expenses and any other costs authorized to be incurred by the Association hereunder, in reasonable detail, for the period or calendar year to which it relates. After the operating budget for any calendar year is approved in writing by the votes of at least five of seven of the Owners (any such approved operating budget being referred to as an "**Operating Budget**") TAP, or the Association, as the case may be, shall implement the Operating Budget for such calendar year, or portion thereof; provided, however, that notwithstanding anything to the contrary in this Agreement, TAP or the Association, as the case may be, shall not be authorized, without the consent of the Owners, to make any expenditures or incur any obligations on behalf of the Association not provided for in the Common Area Maintenance Expenses.

6.9.1 **Approval.** With respect to the Operating Budget submitted to the Owners for approval and vote, each Owner will respond within thirty (30) days after a written request for such approval and, to the extent any Owner disapproves of the Operating Budget, such Owner's notice of disapproval shall set forth in reasonable detail the basis for such disapproval. In the event any Owner fails to respond within the above stated thirty (30) day period, then such Owner shall be deemed to have approved and voted for the Operating Budget which was submitted to it for approval. There shall be a meeting of the Owners to discuss each Operating Budget



submitted to the Owners for approval, the timing and procedure of which shall be more fully provided for in the By-Laws of the Association.

6.9.2 Gap Operations. With respect to the period from the date of this Agreement through the then calendar year and every calendar year thereafter, if an Operating Budget has not been approved by votes of at least five of seven of the Owners in accordance with the terms of Section 6.9 with respect to any calendar year by the start of the calendar year, the Operating Budget in effect for the immediately preceding calendar year, or portion thereof (the "Old Operating Budget") will serve as the interim Operating Budget until a new Operating Budget is so approved (if at all); *provided, however*, that the Old Operating Budget will be deemed to include with respect to each approved line item for ordinary operation, maintenance, repair and replacement expenses thereof increases reflecting adjustments for increases (but not decreases) in the CPI from the beginning of the immediately preceding calendar year to the beginning of the current calendar year and increases in amounts payable with respect to items that are outside the reasonable control of the Association including, without limitation, taxes, insurance, and emergency repairs of Common Areas; *provided, further, however*, that the Old Operating Budget will be deemed to exclude one-time or extraordinary capital items incurred in the Operating Budget in effect for the immediately preceding calendar year. "CPI" shall mean the Consumer Price Index for all Urban Consumers - Atlanta, Georgia MSA - (1982-1984 = 100) of the Bureau of Labor Statistics of the United States Department of Labor. If the Consumer Price Index ceases to use the 1982-1984 average equaling 100 as the basis of calculation, or if a material change is made in the term or number of items contained in the Consumer Price Index, or if the Consumer Price Index is altered, modified, converted or revised in any other material way, then CPI shall be adjusted to the figure that would have been had the change in the manner of computing the Consumer Price Index in effect at the date of this Agreement not been altered. If such Consumer Price Index shall no longer be published by said Bureau, then any substitute or successor index published by said Bureau or other governmental agency of the United States, and similarly adjusted as aforesaid, shall be used. If such Consumer Price Index (or a successor or substitute index similarly adjusted) is not available, a reliable governmental or other reputable publication selected by the Association, which approval may not be unreasonably withheld, and evaluating the information theretofore used in determining the Consumer Price Index shall be used.

## ARTICLE VII Prohibited Uses

None of the Tracts nor any portions thereof or Improvements thereon shall be used (i) for any activity which physically and materially impedes the conduct of the business or occupancy of the Owner of any other Tract, or (ii) in violation of any Legal Requirement with respect to the use of or any activities conducted on such Tract or any portion thereof or any Easement appurtenant to and for the benefit of such Tract. Without limiting the generality of the provisions of this Article VII, no Owner shall use its respective Tract or any part thereof for any use specified in Exhibit T, attached hereto and by this reference made a part hereof (a "Prohibited Use").

## ARTICLE VIII Default and Remedies

8.1 **Events of Default.** The occurrence of any of the events described in Sections 8.1.1 through 8.1.2 shall constitute an “Event of Default” under this Agreement.

8.1.1 Failure by an Owner to pay in full when due to the Association any assessments, billings or invoices which are such Owner’s obligation hereunder, including, without limitation, such Owner’s Percentage Share of the Common Area Maintenance Expenses, in either case within thirty (30) days after receipt of notice of such failure from the Association or the billing Owner, as the case may be (a “Monetary Default”); and

8.1.2 Default by an Owner in the observance or performance of any of the terms, covenants, agreements or conditions contained in the Agreement (other than as specified in Section 8.1.1), and the continuation of such default for a period of thirty (60) days after receipt of notice of such default from the Association or another Owner.

### 8.2 **Remedies for Failure to Pay Assessments.**

8.2.1 **Late Charges.** Any billing, invoice or portion thereof which is not paid when due shall be delinquent, and such delinquent Owner shall pay to the Association or billing Owner a late charge of five percent (5%) of the delinquent amount for any billing, invoice or portion thereof that is delinquent for a period of more than thirty (30) days.

8.2.2 **Interest.** Any delinquent billing, invoice or portion thereof shall bear interest from the due date until the date paid in full, and such delinquent Owner shall pay such interest to the Association or billing Owner. Interest shall be payable at the greater of (i) the Prime Rate plus four percent (4%) or (ii) twelve percent (12%) per annum (the greater of (i) or (ii) being the “Default Rate”), but in no event shall the Default Rate be more than the highest rate permitted under applicable law.

8.2.3 **Lien.** Each assessment duly levied pursuant to this Agreement shall constitute a mechanic’s lien running with the land from thirty (30) days after the time it becomes due and payable provided it remains due and unpaid, including without limitation interest, late charges, costs of collection and attorneys’ fees. Until fully paid and satisfied, such lien shall apply to and encumber all the estate or interest in the applicable Tract, including, without limitation, individual condominium units and all common elements of any condominium regime which the Owner from which payment was due (and individual condominium unit owners in the case of Condo Owner or any Tract which has been submitted to the condominium form of ownership pursuant to O.C.G.A. §§ 44-3-70 *et seq.* or any successor condominium act) owned as of the date when payment was due, and shall also apply to and encumber any other estate or interest in or to the Property thereafter acquired by that Owner from the time that Owner acquires the same. The beneficiary of such lien shall be the Association. To the extent permitted by law, if a notice of lien created by this Subsection 8.2.3 is recorded in accordance with the following sentence, such lien shall be prior to all other liens and encumbrances hereafter recorded or otherwise attaching to the interests of the Owner of the Tract against which the notice was filed, except as provided in Subsection 8.2.3(a). The Association shall be entitled to record a notice of

the delinquent assessment and the lien for such assessment in the Land Records, and the Association shall provide simultaneous written notice thereof to the Owner of the Tract on which such lien is being recorded. The Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its mechanic's lien, subject to the senior liens and encumbrances set forth in Subsection 8.2.3(a). In the event of foreclosure as described in this Subsection 8.2.3, any excess proceeds realized therefrom, after payment of all reasonable costs, including attorney's fees, incurred by the Association in connection therewith and of all amounts due and owing to the Association with respect to the foreclosed Tract, shall belong and be distributed to the Person who owned such Tract prior to Foreclosure or is otherwise entitled thereto.

- (a) It is expressly understood and agreed that any such lien shall be subordinate and inferior to (i) the lien and security title of any institutional first Mortgage or security deed now or hereafter placed upon the parcel subject to such mechanic's lien, (except for such liens as may arise hereunder and be claimed for amounts owed prior to the date of recordation of such first Mortgage or security deed) and (ii) any agreement of condominium hereafter filed pursuant to O.C.G.A. §§ 44-3-70 *et seq.*
- (b) Except for liens for amounts owed prior to recordation of such institutional first Mortgage or security deed, foreclosure or deed in lieu of foreclosure with respect to such institutional first Mortgage or security deed shall relieve the Tract at issue from any liens previously imposed hereunder due to nonpayment (and liability with respect to the unpaid sums giving rise to the foreclosed lien), but shall not relieve such Tract from liability for any payments to be made hereunder after such foreclosure or deed in lieu thereof, nor from any subsequent lien arising out of nonpayment of any such sums, nor from any liens for amounts owed prior to recordation of such institutional first Mortgage or security deed or liability for payments to be made hereunder with respect to any such preexistent claimed lien.
- (c) After the filing of an agreement of condominium with respect to any Tract, any mechanic's lien arising hereunder (whenever arising or filed) with respect to the Tract which is subject to such Agreement shall be deemed to be for labor or services performed or materials furnished for improvements of common elements of the condominium subsequent to the creation of the condominium. Any unit owner of a condominium created pursuant to such Agreement may remove such lien from his condominium unit by the payment of the amount attributable to his condominium unit. The amount which is attributable to his unit shall be computed by reference to the liability of such unit for common element expenses under the Agreement.

8.2.4 Right of the Owners to Cure TAP or Association's Failure to Perform its Duties to Maintain; Self-Help. In the event TAP or, after delegation and assignment of the obligations of TAP hereunder to the Association pursuant to Section 4.1, the Association shall fail to perform the maintenance required of it pursuant to Section 5.4 above, any Owner may give notice of such failure to TAP or the Association, as the case may be, and if such failure continues for a period in excess of sixty (60) days following such notice (provided that no such

notice shall be necessary in cases of emergency where failure immediately to perform such maintenance would threaten imminent harm to person or property), then any Owner shall have the right, but not the obligation, to perform such maintenance and, in such event, such performing Owner shall be entitled to reimbursement by TAP or the Association (as the case may be) for the percentage for which such performing party is not otherwise obligated hereunder (17.22 % in the case of TAP Owner after delegation and assignment of the obligations of TAP hereunder to the Association pursuant to Section 4.1, 22 % in the case of Estates Owner, 13.19 % in the case of Park Regency Owner, 18.81 % in the case of Condo I Owner, 14.11 % in the case of Condo II Owner, 14.11 % in the case of Apartment Owner, and .56 % in the case of Single-Family Owner) of all reasonable, out-of-pocket Common Area Maintenance Expenses actually incurred and paid to unrelated third parties or, if paid to related parties, not to exceed a competitive market price therefor and which otherwise are generally consistent with the level of expenses historically incurred by TAP or the Association (as the case may be) in performance of such work with due regard to inflation.

- (a) Additionally, such performing party shall also be entitled to reimbursement from any other Owner now or hereafter obligated for the payment of Common Area Maintenance Expenses up to the percentage of such Owner's obligation.
- (b) Notwithstanding the foregoing, neither Estates Owner, Park Regency Owner, Condo I Owner, Condo II Owner, Apartment Owner, nor Single-Family Owner, shall (except in cases of emergency) be entitled to "self-help" in accordance with the preceding sentence if the failure by TAP or the Association, as the case may be, to maintain cannot reasonably be cured within such sixty (60) day period, but such party commences a cure within such period and thereafter diligently and continuously prosecutes same to completion.
- (c) Upon written request by TAP or the Association, as the case may be, or by any other non-performing party obligated for reimbursement, Estates Owner, Park Regency Owner, Condo I Owner, Condo II Owner, Apartment Owner, or Single-Family Owner, as the case may be, shall promptly deliver to such requesting party copies of appropriate documents, invoices, receipts and other information substantiating the incurring and payment of such costs which are the subject of any such request for reimbursement and, upon reasonable prior notice to such performing party and during normal business hours, such requesting party may, at such party's sole expense and cost, inspect, audit and copy pertinent books and records of the performing party pertaining to reimbursement requests made under this Subsection 8.2.4.
- (d) The billing Owner shall, subject to Section 8.4, below, have the right to sue TAP or the Association (after delegation and assignment pursuant to Section 4.1 above) to collect any reimbursements owed hereunder plus costs of collection (including, without limitation, court costs and reasonable attorneys fees), to the extent such reimbursements are not paid within sixty (60) days following invoice therefor.
- (e) In addition, until the delegation and assignment pursuant to Section 4.1 above, the Owners shall have a mechanic's lien against the TAP Tract for any such

reimbursements due from, but unpaid by, TAP within thirty (30) days following invoice therefor, subject to the same limitations contained in Subsection 8.2.3 above that apply to the Association.

- (f) The foregoing rights and remedies shall be the sole rights and remedies available to TAP Owner (after TAP's Type B Membership shall cease), Estates Owner, Park Regency Owner, Condo I Owner, Condo II Owner, Apartment Owner, and Single-Family Owner, whether at law or in equity, as a result of any breach of the maintenance obligations set forth in Sections 5.4, 6.3, and 6.6 hereof and neither TAP Owner, Estates Owner, Park Regency Owner, Condo I Owner, Condo II Owner, Apartment Owner, nor Single-Family Owner shall have the right to seek specific performance regarding such obligations. It is expressly understood and agreed that the "self-help" remedy afforded TAP Owner, Estates Owner, Park Regency Owner, Condo I Owner, Condo II Owner, Apartment Owner, and Single-Family Owner in accordance with the provisions of this Subsection 8.2.4 shall apply with respect to, and to the extent of, Common Areas designated in Section 5.2 above. Further, nothing provided in this Subsection 8.2.4 entitling TAP Owner, Estates Owner, Park Regency Owner, Condo I Owner, Condo II Owner, Apartment Owner, and Single-Family Owner to "self-help" shall permit or entitle TAP Owner, Estates Owner, Park Regency Owner, Condo I Owner, Condo II Owner, Apartment Owner, or Single-Family Owner to perform maintenance with respect to the Common Areas, and incur Common Area Maintenance Expenses subject to reimbursement, at a level exceeding the level or standard of maintenance with respect to such Common Areas provided by Subsection 5.4.1 above.

**8.3 Legal and Equitable Relief.** In the event of a violation by any Owner of any of the agreements made by such party under this Agreement, the Association shall have the right, in addition to the lien rights provided above, but always subject to the provisions of Section 8.4 below, to prosecute any proceedings at law or in equity against any Owner (whether affirmative or negative in nature) and to recover damages therefore plus costs of collection (including, without limitation, court costs and reasonable attorneys' fees); provided, however, that the Association shall give such Owner, as the case may be, sixty (60) days notice of a claimed violation, and an opportunity to cure such claimed violation, prior to instituting a suit for damages. The remedies available under this Section 8.3 shall include, by way of illustration but not limitation, temporary restraining orders obtained with or without notice, preliminary injunctions and permanent injunctions enjoining any such default, and actions for specific performance of this Agreement.

**8.4 Exculpation.** Notwithstanding any other provision of this Agreement to the contrary, if the Association or any Owner brings any action or proceeding, following a default by an Owner in the payment of charges assessed against such Owner's Tract, to enforce the obligation of such Owner to pay such charges (together with late charges, interest and costs with respect thereto authorized herein to be collected) or to exercise any right of Foreclosure against such Owner's Tract, the Association or the Owners, as applicable, shall be entitled to satisfy a judgment obtained against an Owner only to the extent of such Owner's interest in such Owner's Tract, it being specifically understood and agreed that the Association or the Owners, as

applicable, shall look only to an Owner's Tract for the payment of charges (and late charges, interest, and costs) assessed against such Tract. The foregoing provision concerns the liability of individual Owners and does not and shall not be interpreted or construed to affect or impair in any manner the rights of the Association or any Owner to pursue any remedy the Association or an Owner might have under this Agreement against a defaulting Owner, including, without limitation, (i) any right of the Association to foreclose and sell a defaulting Owner's Tract, subject to the senior liens and encumbrances set forth in Subsection 8.2.3(a) or (ii) the right of the Association, or any Owner to seek and obtain equitable relief with respect to any Event of Default hereunder.

8.5 **Remedies Cumulative.** Except as the personal liability of Owners is limited as provided in Section 8.4 hereof and as otherwise expressly limited by this Agreement, all rights and remedies available to the Association or an Owner under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other available right or remedy.

8.6 **No Waiver.** No delay or failure on the part of the Association or any other aggrieved party to invoke any available right, power or remedy in respect of a breach of this Agreement, the By-laws or the rules and regulations the Association shall be held to be a waiver by that party of (or estop that party from asserting) any right, power or remedy available to it upon the recurrence or continuance of said breach or the occurrence of a different breach.

8.7 **No Obligation to Enforce Agreement or Exercise Rights.** Neither the Association nor its director or officers, shall be under any obligation to take any action to enforce the terms of this Agreement, the By-laws or the rules and regulations of the Association or to exercise any of the rights, privileges or easements of the Association hereunder or thereunder.

8.8 **Mortgagee Cure.** Notwithstanding any contrary provision of this Agreement, any holder of a Mortgage now or hereafter encumbering any portion of any Tract shall be privileged, but not obligated, to cure any default hereunder by its respective grantor within the same time periods after its receipt of notice of any such default as are set forth hereinabove with respect to such grantor.

8.9 **No Termination.** A default under this Agreement on the part of the Association or an Owner shall not entitle any other Owner to cancel, rescind or otherwise terminate this Agreement or any covenants, Easements, restrictions or conditions set forth herein, but such limitation shall not affect any other rights or remedies that the Association or an Owner may have under this Agreement, at law or in equity by reason of such default.

## ARTICLE IX TAP's Powers

Until such time as the Association is established and is delegated and assigned the rights, powers, duties and obligations herein described, as provided in Section 4.1 hereof, TAP shall have all of the rights and powers and shall perform all of the duties and obligations, of the Association hereunder. By way of illustration and not limitation, TAP shall have the power to

assess Owners, as provided in Article VI hereof, to manage, operate and improve the Common Areas, and to pay Common Area Maintenance Expenses incurred by TAP on behalf of the Owners. TAP shall be entitled to exercise its rights and powers hereunder so long as either TAP or an affiliate of TAP owns fee simple title to the TAP Tract. All rights, powers, duties and obligations of TAP under this Article IX are personal to TAP and shall not pass to any successor-in-title of TAP as to all or any portion the TAP Tract, unless such successor-in-title is an affiliate of TAP and executes, along with TAP, an express written assignment and transfer of such rights, powers, duties and obligations making express reference to this Article IX.

## ARTICLE X

### Notices

Any notice, request or other communication (a "notice") required or permitted to be given hereunder shall be in writing and shall be delivered by hand or overnight courier (such as United Parcel Service or Federal Express), sent by facsimile (provided a copy of such notice is deposited with an overnight courier for next business day delivery) or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each Owner at its address as set forth below. Any such notice shall be considered given on the date of such hand or courier delivery, confirmed facsimile transmission (provided a copy of such notice is deposited with an overnight courier for next business day delivery), deposit with such overnight courier for next business day delivery, or deposit in the United States mail, but the time period (if any is provided herein) in which to respond to such notice shall commence on the date of hand or overnight courier delivery or on the date received following deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice. By giving at least five (5) days' prior written notice thereof, any party may from time to time and at any time change its mailing address hereunder. Any notice of an Owner may be given by such Owner's counsel.

In no event shall this Agreement be altered, amended or modified by electronic mail or electronic record. The Owners acknowledge and agree that this Agreement shall not be executed, entered into, altered, amended or modified by electronic means.

The Owners' respective initial addresses for notice purposes are set forth below. Telephone numbers are given for convenience of reference only. Notice by telephone shall not be effective.

TAP Owner:	TAP Associates, L.P. c/o Pope & Land Enterprises, Inc. 3225 Cumberland Boulevard, Suite 400 Atlanta, Georgia 30339 Attention: Lawrence P. Kelly Telephone: 770/980-0808 Facsimile: 770/984-8630
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with a copy to:

Paul, Hastings, Janofsky & Walker LLP  
600 Peachtree Street, N.E.  
Twenty-Fourth Floor  
Atlanta, Georgia 30308  
Attention: Thomas Burch, Jr.  
Telephone: 404/815-2456  
Facsimile: 404/685-5456

Condo I Owner:

c/o Alexander Condominium Development I, LLC  
One Riverside  
4401 Northside Parkway  
Suite 800  
Atlanta, Georgia 30327-3057  
Attention: Ms. Sherry W. Cohen  
Telephone No. 404/846-5025  
Facsimile No. 404/504-9388

with a copy to:

King & Spalding LLP  
191 Peachtree Street, N.E.  
Atlanta, Georgia 30303-1763  
Attention: Dan L. Heller, Esq./D. Clayton Howell, Esq.  
Telephone No. 404/572-4600  
Facsimile No. 404/572-5148

Condo II Owner:

c/o Alexander Condominium Development II, LLC  
One Riverside  
4401 Northside Parkway  
Suite 800  
Atlanta, Georgia 30327-3057  
Attention: Ms. Sherry W. Cohen  
Telephone No. 404/846-5025  
Facsimile No. 404/504-9388

with a copy to:

King & Spalding LLP  
191 Peachtree Street, N.E.  
Atlanta, Georgia 30303-1763  
Attention: Dan L. Heller, Esq./D. Clayton Howell, Esq.  
Telephone No. 404/572-4600  
Facsimile No. 404/572-5148

Apartment Owner:

c/o Post Apartment Homes, L.P.  
One Riverside  
4401 Northside Parkway  
Suite 800  
Atlanta, Georgia 30327-3057  
Attention: Ms. Sherry W. Cohen



Telephone No. 404/846-5025

Facsimile No. 404/504-9388

with a copy to:

King & Spalding LLP

191 Peachtree Street, N.E.

Atlanta, Georgia 30303-1763

Attention: Dan L. Heller, Esq./D. Clayton Howell, Esq.

Telephone No. 404/572-4600

Facsimile No. 404/572-5148

Single-Family Owner

c/o Post Services, Inc.

One Riverside

4401 Northside Parkway

Suite 800

Atlanta, Georgia 30327-3057

Attention: Ms. Sherry W. Cohen

Telephone No. 404/846-5025

Facsimile No. 404/504-9388

with a copy to:

King & Spalding LLP

191 Peachtree Street, N.E.

Atlanta, Georgia 30303-1763

Attention: Dan L. Heller, Esq./D. Clayton Howell, Esq.

Telephone No. 404/572-4600

Facsimile No. 404/572-5148

Park Owner:

c/o Akard-McKinney Investment Company, LLC

One Riverside

4401 Northside Parkway

Suite 800

Atlanta, Georgia 30327-3057

Attention: Ms. Sherry W. Cohen

Telephone No. 404/846-5025

Facsimile No. 404/504-9388

with a copy to:

King & Spalding LLP

191 Peachtree Street, N.E.

Atlanta, Georgia 30303-1763

Attention: Dan L. Heller, Esq./D. Clayton Howell, Esq.

Telephone No. 404/572-4600

Facsimile No. 404/572-5148

Park Regency Owner

Park Regency Condominium Association, Inc.

c/o Park Regency Partners L.P.

c/o The Brickstone Companies

The Plaza at Continental Park

2101 Rosecrans Ave., Suite 5252  
El Segundo, California 90245  
Attn: Mr. John Kusmiersky  
Telephone No. 310/607-0003  
Facsimile No. 310/607-0005

with a copy to:

McKenna, Long & Aldridge LLP  
303 Peachtree Street, Suite 5300  
Atlanta, Georgia 30308  
Attention: Robert E. Tritt, Esq  
Telephone No. 404/527-8130  
Facsimile No. 404/527-4198

Estates Owner

Estates at Phipps Limited Partnership  
1401 Main Street  
Suite 650  
Columbia, South Carolina 29201  
Attention: Robert M. Mundy, Jr.  
Telephone No. 803/765-9318  
Facsimile No. 803/765-9427

with a copy to:

Nexsen Pruet Jacobs & Pollard, LLP  
1441 Main Street, 15<sup>th</sup> Floor  
Columbia, South Carolina 29202  
Attention: W. Leighton Lord III, Esq.  
Telephone No. 803/540-2013  
Facsimile No. 803/253-8277

#### **ARTICLE XI**

#### **Covenants Running With the Land**

The covenants and agreements made herein shall be and be deemed to be covenants running with the Tracts, shall be and be deemed to be binding upon the Owners and their transferees, successors and assigns, and benefiting the Owners, their transferees, successors and assigns, but always subject to the terms and provisions hereof. In the event of any transfer of title to any portion of any Tract, the transferor, as to the portion of such Tract transferred, shall cease to be liable and shall automatically be released from any and all liability for the performance or observance of any agreements or conditions on its part to be performed or observed hereunder from and after the time of such transfer, it being understood and agreed that the obligations and liabilities set forth herein are not personal to the parties hereto, but run with the land, subject to the following sentence with regard to liability for prior defaults and provided that nothing herein shall, but always subject to Section 8.4 below, release or relieve any transferor from any liability hereunder arising prior to the sale or transfer. From and after each transfer, the transferee shall be liable for the performance and observance of this Agreement (as to liabilities and obligations arising or to be performed from and after the transfer only but including continuing defaults of non-performance) as to the Tract or any portion thereof

conveyed to the transferee; provided that such transferee shall also (but subject to the provisions of Section 8.4 and Subsection 8.2.3) be jointly and severally liable with the transferor for payment or reimbursement of any sums due and owing hereunder (but unpaid) prior to the date of the transfer (and the Tract so transferred shall likewise be transferred subject to any liens or claims of lien hereunder respecting the amount so owned at such time). Upon each transfer, the transferor shall thereby be divested of its rights and obligations thereafter accruing as to the Tract transferred and the transferee shall succeed to the same; provided, however, transfers under a deed to secure debt, Mortgage or other encumbrance, shall not divest the transferor until such time as such deed to secure debt, Mortgage or other encumbrance is foreclosed. Any conveyance of any portion of the Tract which is the subject of this Agreement shall also convey, as applicable, the rights, privileges, duties and obligations contained in this Agreement which are appurtenant to or bind or are the obligation of such portion of the Tract, regardless of whether specific mention is made of this Agreement and regardless of whether a conveyance is made of, or subject to, the rights privileges, duties and obligations, as applicable herein contained. Further, one purpose of this Agreement, among others, is the establishment of cost-sharing covenants with regard to the Common Areas, and none of the terms or provisions of this Agreement shall be or deemed to be "covenants restricting land to certain uses" for purposes of O.C.G.A. § 44-5-60, or any similar law or statute, and the Owners (knowingly, willingly and upon the advice of legal counsel) each expressly forever waive, release and discharge any right that such party now has or may have to claim or assert in any legal or other circumstances that any of the terms or provisions of this Agreement are in any way covered or limited by said Section or any similar law or statute.

## ARTICLE XII

### Rule Against Perpetuities

In the event that the Rule Against Perpetuities, or any rule of law with respect to restrictions on the alienation of property or remoteness of vesting of property interests, shall limit the time within which any rights contained in this Agreement may be valid, enforceable or exercisable, then such right shall be valid, enforceable and exercisable only within the period of time permitted for such validity, enforceability or exercise by the Rule Against Perpetuities or such other rule of law, which period of time the parties hereto agree, for their mutual convenience, shall be measured as that period commencing on the date of this Agreement and terminating on the date which is twenty-one (21) years from and after the date of the death of the last survivor of the children, grandchildren and great-grandchildren, in life as of the date of this Agreement, of Her Majesty Queen Elizabeth II, Queen of the United Kingdom of Great Britain and Northern Ireland.

## ARTICLE XIII

### Miscellaneous

13.1 Notice to Mortgagees. Any notice of delinquency or other default served upon an Owner shall be served concurrently upon any Mortgagee of such Owner's Tract, provided that the serving Owner has received a written request for such notices stating the name and address of such Mortgagee. Failure to deliver any such concurrent notice to any Mortgagee of such Owner's Tract shall in no way affect the validity of such notice with respect to such Owner, but

such notice shall not be valid against any interest of such Mortgagee until served upon such Mortgagee in accordance with the provisions of this Section 13.1.

13.2 **Applicable Law.** This Agreement shall be governed, construed and enforced pursuant to and in accordance with the laws of the State of Georgia.

13.3 **Exhibits.** The exhibits are integral parts of this Agreement and are incorporated herein by this reference.

13.4 **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Agreement to any Person or any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement are declared to be severable.

13.5 **Construction.** This Agreement shall not be construed more strictly against one party than against another merely by virtue of the fact that this Agreement may have been prepared by counsel for one of the parties, it being mutually acknowledged and agreed that each Owner and their respective counsel have contributed substantially and materially to the preparation and negotiation of this Agreement. Accordingly, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments thereto.

13.6 **No Waiver.** No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligation specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

13.7 **Entire Agreement.** This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not embodied herein shall be of any force or effect.

13.8 **Gender and Number.** 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 the plural shall include the singular as the context may require.

13.9 **Reasonableness Standard.** Wherever in this Agreement consent or approval with respect to any matter is required to be obtained from any party and the provision calling for such consent or approval provides that such consent or approval shall not be unreasonably withheld, delayed or conditioned or is similarly limited, it is the intention of the parties that, in giving or withholding such consent or approval, the party from whom consent or approval is required shall be governed and bound by standards of "commercial reasonableness", with due regard to any other factors, standards or limitations otherwise expressed with respect to the subject matter or giving of such consent. Notwithstanding the foregoing, however, if and to the extent that under the laws of the State of Georgia, now or hereafter existing, a provision that consent or approval will not be unreasonably withheld, delayed or conditioned is unenforceable

for any reason, it is the intention of the parties that in such event (and only in such event), the limitation of reasonableness expressed in connection with the giving of such consent or approval shall be stricken such that the requirement for such consent or approval shall remain effective nevertheless without such limitation; provided, however, that even under such circumstance, such consent or approval by the party having such right shall not be arbitrarily or capriciously exercised and shall be, to the maximum extent permitted by law, subject to standards of commercial reasonableness.

13.9.1 Amendments. The provisions of this Agreement may be abrogated, modified, rescinded, terminated or amended in whole or in part only by a written amendment executed and acknowledged by the seven (7) Members of the Association; provided, however, that any amendment that (i) limits or curtails any easement rights granted or reserved herein, (ii) alters the method for the allocation of assessments for Tracts from that set forth in Section 6.6 hereof, (iii) affects the voting rights of Members of the Association or the number of votes required to approve any matter put before the members for a vote, or (iv) alters the provisions of Section 5.2 as it relates to the designation of Common Areas, must be approved by any Mortgagee of any Member which owns or has a security interest in any Tract which would be materially and adversely affected by any such action described in (i) through (iv) above. Notwithstanding anything to the contrary above, if any proposed abrogation, modification, rescindment, termination or amendment in whole or in part of this Agreement affects less than all of the Members of the Association, then this Agreement may be so abrogated, modified, rescinded, terminated or amended in whole or in part by a written amendment executed and acknowledged by all of those Members of the Association who are so affected.

13.10 Headings. The headings inserted at the beginning of certain sections of this Agreement are for convenience only, and do not add or subtract from the meaning of the contents of each such section.

13.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which when taken together shall constitute one and the same original.

13.12 Estoppels. Upon the written request of any Owner, the Association or requested Owner shall, within fifteen (15) calendar days after receipt of such written request, submit a written statement, addressed to the Person designated by the requesting Owner, that, to the responding Association or Owner's actual knowledge, this Agreement is in full force and effect, that there has been compliance with all terms, covenants and conditions of this Agreement by the requesting Owner (or if there exists any noncompliance, the nature of such noncompliance), that there exist no uncured defaults in the terms, covenants and conditions of this Agreement by the requesting Owner (or, if there exist any defaults, the nature of such defaults), and, such other statements that may be reasonably requested by such requesting Owner. Any such statement shall be conclusive and binding with regard to any matter therein stated as between the party who issued the statement and any addressee thereof, provided that such addressee reasonably, and in good faith, relies thereon. If the Association or a requested Owner fails to issue a statement within fifteen (15) calendar days after such party's receipt of a request for same, it shall be conclusively presumed that there are no unpaid sums then owed hereunder by the requesting Owner and that the requesting Owner is not delinquent in the performance of any other

obligation under this Agreement, which sums, if unpaid, or which other obligations, if unperformed, would constitute a breach or default under this Agreement.

13.12.1 Furthermore, Estates Owner and Park Regency Owner hereby certify to TAP Owner, Condo I Owner, Condo II Owner, Apartment Owner, Single-Family Owner, and Park Owner and their assigns hereunder, that: (i) no Events of Default currently exist under this Agreement and no circumstance exists which, with the passage of time or notice, or both, will give rise to an Event of Default under this Agreement, and (ii) as of the date of this Agreement, all obligations theretofore payable or performable by the TAP have been paid in full or otherwise fully performed or satisfied.

13.13 **Habendum**. Each grantee of any Easement or other right Granted under this Agreement shall have and hold such Easement and rights, together with all and singular the other rights, members and appurtenances thereof, to the same being, belonging, or in any wise appertaining to the only proper use, benefit and behoof of such Owner and grantee.

13.14 **No Transfer of Fee Title**. Neither TAP, nor Estates, nor Park Regency, nor Alexander I, nor Alexander II, nor PSI, nor PAH, nor Akard conveys to any other party hereby any title in or to their respective Tracts, but merely Grants the rights, privileges and Easements herein set forth.

13.15 **No Public Rights in Property**. Notwithstanding anything herein to the contrary, nothing in this Agreement shall create any right in the public at large or any other person or Person (other than an Owner) with respect to any Tract or any Easement, license or other right Granted or created by this Agreement.

13.16 **No Joint Venture**. This Agreement shall not be deemed or construed to create any joint venture, partnership or similar relationship between or among any of the Owners.

13.17 **No Third Party Beneficiaries**. This Agreement is made for the exclusive benefit of the parties hereto and their respective legal representatives, heirs, successors-in-title, transferees and assigns, but not for any third person.

13.18 **Time of the Essence**. Time is of the essence with respect to this Agreement and each and every provision hereof.

13.19 **Further Assurances**. Each Owner agrees that it will without further consideration execute and deliver such other documents and take such other action, whether prior or subsequent to the execution of this Agreement, as may be reasonably requested by any of the other Owners or the Association to consummate more effectively the purposes, spirit or subject matter of this Agreement.

13.20 **Park Regency Covenant**. The Park Regency Owner agrees that until April 2, 2009, the northwestern and southwestern faces of the parking deck structure constructed upon the Park Regency Tract will not be modified by the then Owner of the Park Regency Tract in a way so that its appearance becomes garish, offensive or unsightly as viewed from the Estates Tract; provided, however, this restriction shall not apply to actions taken in good faith by the Park Regency Owner, its successors in title, its lenders or by a condominium association serving

the Park Regency Tract, in the interest of preserving and maintaining a high quality condominium project upon the Park Regency Tract.

**[SIGNATURES COMMENCE ON FOLLOWING PAGE]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal and delivered as of the date first above written.

TAP:

Signed, sealed and delivered in  
the presence of:

TAP ASSOCIATES, L.P.,  
a Georgia limited partnership

By: The Avenue GP, LLC,  
a Georgia limited liability company,  
Authorized General Partner

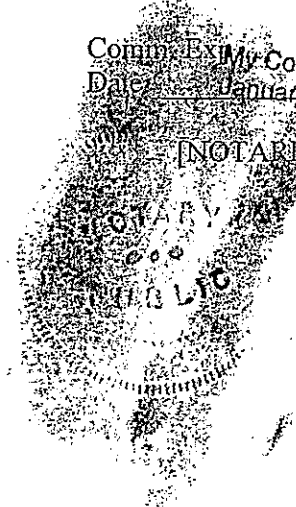
Y. H. M. A. K. C.  
Unofficial Witness

Herri Mills-Brown  
Notary Public

By: [Signature]  
Name: Lawrence P. Kelly  
Title: Manager and Member

Comm. Expiration Commission Expires  
Date: January 2, 2009

[NOTARIAL SEAL]



(Signatures continued on next page)



(Signatures continued from previous page)

**ALEXANDER I:**

**ALEXANDER CONDOMINIUM  
DEVELOPMENT I, LLC,**  
a Georgia limited liability company

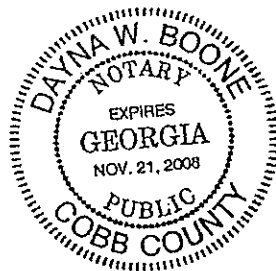
Signed, sealed and delivered in the  
presence of:

Jennifer D. Boone  
Unofficial Witness

Dayna W. Boone  
Notary Public

Comm. Exp. Date: \_\_\_\_\_

[NOTARIAL SEAL]



By: Post Services, Inc.,  
a Georgia corporation,  
sole member

By: Sherry W. Cohen  
Name: Sherry W. Cohen  
Title: Executive Vice President **CORP.**  
**SEAL**

(Signatures continued on next page)

(Signatures continued from previous page)

ALEXANDER II:

ALEXANDER CONDOMINIUM  
DEVELOPMENT II, LLC,  
a Georgia limited liability company

Signed, sealed and delivered in the  
presence of:

Jennifer D. Bure  
Unofficial Witness

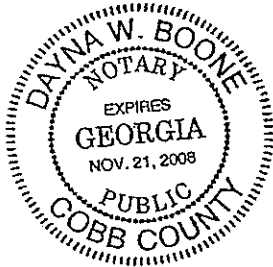
Dayna W. Boone  
Notary Public

By: Post Services, Inc.,  
a Georgia corporation,  
sole member

By: Sherry W. Cohen  
Name: Sherry W. Cohen  
Title: Executive Vice President

Comm. Exp. Date: \_\_\_\_\_

[NOTARIAL SEAL]



CORP.  
SEAL

(Signatures continued on next page)

(Signatures continued from previous page)

PSI:

POST SERVICES, INC.,  
a Georgia corporation

Signed, sealed and delivered in the  
presence of:

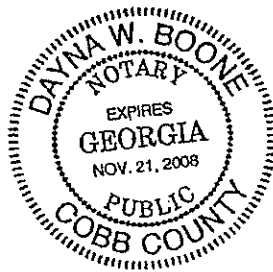
Jennifer W. Boone  
Unofficial Witness

By: Sherry W. Cohen  
Name: Sherry W. Cohen  
Title: Executive Vice President

Dayna W. Boone  
Notary Public

Comm. Exp. Date: \_\_\_\_\_

[NOTARIAL SEAL]



CORP.  
SEAL

(Signatures continued on next page)

(Signatures continued from previous page)

PAH:

**POST APARTMENT HOMES, L.P.**  
a Georgia limited partnership

Signed, sealed and delivered in the  
presence of:

By: Post GP Holdings, Inc., a Georgia  
corporation, its sole general partner

Jennifer D. Beane  
Unofficial Witness

By: Sherry W. Cohen  
Name: Sherry W. Cohen  
Title: Executive Vice President

Dayna W. Boone  
Notary Public

Comm. Exp. Date: \_\_\_\_\_

[NOTARIAL SEAL]



CORP.  
SEAL

(Signatures continued on next page) (Signatures continued from previous page)

AKARD:

AKARD-MCKINNEY INVESTMENT  
COMPANY, LLC,

a Texas limited liability company

By: Post Apartment Homes, L.P.  
By: Post GP Holdings, Inc.

By: Sherry W. Cohen

Name: Sherry W. Cohen

Title: Executive Vice President

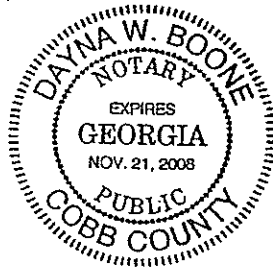
Signed, sealed and delivered in the  
presence of:

Jennifer D. Boone  
Unofficial Witness

Dayna W. Boone  
Notary Public

Comm. Exp. Date: \_\_\_\_\_

[NOTARIAL SEAL]



CORP.  
SEAL

(Signatures continued on next page)

(Signatures continued from previous page)

ESTATES:

Signed, sealed and delivered in  
the presence of:

ESTATES AT PHIPPS LIMITED PARTNERSHIP,  
a South Carolina limited partnership

Bobbie Interot  
Unofficial Witness

By: Estates/Atlanta I, Inc.,  
a South Carolina corporation, its general partner

Gm R Mj  
Notary Public

By: Anna Maria Haftfeld  
Name: Anna Maria Haftfeld  
Title: Its Authorized Agent

Comm. Exp.

Date: \_\_\_\_\_

[NOTARIAL SEAL]



CORP.  
SEAL

(Signatures continued on next page)

(Signatures continued from previous page)

PARK REGENCY:

Signed, sealed and delivered in  
the presence of:

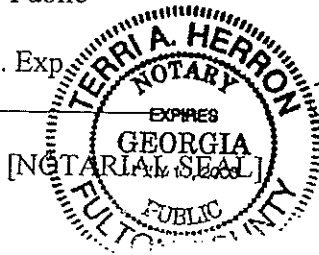
PARK REGENCY CONDOMINIUM ASSOCIATION  
INC.,  
a Georgia nonprofit corporation

Connie Wise  
Unofficial Witness

By: [Signature]  
Name: JOHN KUSMIERSKY  
Title: PRESIDENT

Terri A. Herron  
Notary Public

Comm. Exp.  
Date: \_\_\_\_\_



JULY 10, 2006



EXHIBIT "A"TAP TRACTParcel No. 1 - Tap Property:

ALL THAT TRACT or parcel of land lying in or being in Land Lot 44 of the 17th District, Fulton County, City of Atlanta, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at the southwest end of the miter of intersection of the northerly right-of-way of Lenox Road (also known as State Route 141 Connector) (formerly known as Buckhead Loop) (variable right-of-way width) with the northwesterly right-of-way of Phipps Boulevard (formerly known as Wieuca Connector) (96 foot wide right-of-way width at this point), said point being the POINT OF COMMENCEMENT;

THENCE proceed along said mitered intersection North 62 degrees 21 minutes 27 seconds East for a distance of 38.07 feet to a point; thence proceed along said northwesterly right-of-way of Phipps Boulevard the following courses and distances: North 19 degrees 53 minutes 51 seconds East for a distance of 17.73 feet to a point; thence North 20 degrees 25 minutes 26 seconds East for a distance of 100.03 feet to a point; thence North 20 degrees 02 minutes 55 seconds East for a distance of 20.06 feet to a one-half inch reinforcing bar; thence along a curve to the right having a radius of 626.47 feet and an arc length of 84.57 feet, being subtended by a chord of North 32 degrees 44 minutes 49 seconds East for a distance of 84.50 feet to a one-half inch reinforcing bar at the POINT OF BEGINNING;

The POINT OF BEGINNING thus established, thence depart said northwesterly right-of-way of Phipps Boulevard, North 59 degrees 21 minutes 09 seconds West for a distance of 140.78 feet to a point; thence along a curve to the right having a radius of 133.65 feet and an arc length of 112.19 feet, being subtended by a chord of North 35 degrees 18 minutes 13 seconds West for a distance of 108.93 feet to a point; thence North 11 degrees 15 minutes 17 seconds West for a distance of 24.17 feet to a "P.K." nail in concrete sidewalk on the southeasterly right-of-way of Alexander Road (a private road)(right-of-way width varies); thence proceed along the southeasterly, southerly and south-westerly right-of-way of said Alexander Road the following courses and distances: North 78 degrees 46 minutes 58 seconds East for a distance of 49.47 feet to a point; thence along a curve to the left having a radius of 200.00 feet and an arc length of 51.26 feet, being subtended by a chord of North 71 degrees 26 minutes 23 seconds East for a distance of 51.12 feet to a point; thence North 64 degrees 05 minutes 48 seconds East for a distance of 63.39 feet to a one-half inch reinforcing bar; thence along a curve to the right having a radius of 196.00 feet and an arc length of 166.15 feet, being subtended by a chord of North 88 degrees 22 minutes 55 seconds East for a distance of 161.22 feet to a "P.K." nail in concrete sidewalk; thence along a curve to the right having a radius of 40.00 feet and an arc length of 69.14 feet, being subtended by a chord of South 17 degrees 48 minutes 33 seconds East for a distance of 60.85 feet to a point at the aforesaid northwesterly right-of-way of Phipps Boulevard; thence proceed along said northwesterly right-of-way of Phipps Boulevard the following courses



and distances: Along a curve to the right having a radius of 583.11 feet and an arc length of 81.81 feet, being subtended by a chord of South 35 degrees 42 minutes 12 seconds West for a distance of 81.75 feet to a 3-inch brass disc; thence South 39 degrees 49 minutes 40 seconds West for a distance of 118.53 feet to a one-half inch reinforcing bar; thence along a curve to the left having a radius of 626.47 feet and an arc length of 34.56 feet, being subtended by a chord of South 38 degrees 11 minutes 38 seconds West for a distance of 34.56 feet to the POINT OF BEGINNING;

Said property contains 1.2002 acres or 52,279 square feet.

**Parcel No. 2 - Alexander Road Private Roadway Tract:**

ALL THAT TRACT or parcel of land lying in or being in Land Lot 44 of the 17th District, City of Atlanta, Fulton County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at the southwest end of the miter of intersection of the northerly right-of-way of Lenox Road (also known as State Route 141 Connector) (formerly known as Buckhead Loop) (variable right-of-way width) with the northwesterly right-of-way of Phipps Boulevard (formerly known as Wieuca Connector) (96 foot wide right-of-way width at this point), said point being the POINT OF COMMENCEMENT;

THENCE proceed along said mitered intersection North 62 degrees 21 minutes 27 seconds East for a distance of 38.07 feet to a point;

THENCE proceed along said northwesterly right-of-way of Phipps Boulevard the following courses and distances: North 19 degrees 53 minutes 51 seconds East for a distance of 17.73 feet to a point;

THENCE North 20 degrees 25 minutes 26 seconds East for a distance of 100.03 feet to a point;

THENCE North 20 degrees 02 minutes 55 seconds East for a distance of 20.06 feet to a one-half inch reinforcing bar;

THENCE along the arc of a curve to the right having a radius of 626.47 feet and an arc length of 84.57 feet, being subtended by a chord of North 32 degrees 44 minutes 49 seconds East for a distance of 84.50 feet to a one-half inch reinforcing bar;

THENCE along the arc of a curve to the right having a radius of 626.47 feet and an arc length of 34.56 feet, being subtended by a chord of North 38 degrees 11 minutes 38 seconds East for a distance of 34.56 feet to a one-half inch reinforcing bar;

THENCE North 39 degrees 49 minutes 40 seconds East for a distance of 118.53 feet to a 3-inch brass disk in concrete sidewalk;

THENCE along the arc of a curve to the left having a radius of 583.11 feet and an arc length of 81.81 feet, being subtended by a chord of North 35 degrees 42 minutes 12 seconds East for a distance of 81.75 feet to a point on the southerly right-of-way of Alexander Road (a private road) (variable right-of-way width), said point being the POINT OF BEGINNING;

THE POINT OF BEGINNING thus established, thence depart said northwesterly right-of-way of Phipps Boulevard and proceed along the southerly and southwesterly right-of-way of said Alexander Road the following courses and distances: Along a curve to the left having a radius of

40.00 feet and an arc length of 69.14 feet, being subtended by a chord of North 17 degrees 48 minutes 33 seconds West for a distance of 60.85 feet to a "P.K." nail in concrete sidewalk;

THENCE along a curve to the left having a radius of 196.00 feet and an arc length of 166.15 feet, being subtended by a chord of South 88 degrees 22 minutes 55 seconds West for a distance of 161.22 feet to a one-half inch reinforcing bar;

THENCE South 64 degrees 05 minutes 48 seconds West for a distance of 63.39 feet to a point;

THENCE along a curve to the right having a radius of 200.00 feet and an arc length of 51.26 feet, being subtended by a chord of South 71 degrees 26 minutes 23 seconds West for a distance of 51.12 feet to a point;

THENCE South 78 degrees 46 minutes 58 seconds West for a distance of 143.33 feet to a point;

THENCE along the arc of a curve to the right having a radius of 861.30 feet and an arc length of 110.94 feet, being subtended by a chord of South 82 degrees 28 minutes 22 seconds West for a distance of 110.86 feet to a point;

THENCE along the arc of a curve to the right having a radius of 66.33 feet and an arc length of 14.86 feet, being subtended by a chord of North 87 degrees 24 minutes 51 seconds West for a distance of 14.83 feet to a point;

THENCE along the arc of a curve to the right having a radius of 66.33 feet and an arc length of 18.33 feet, being subtended by a chord of North 73 degrees 04 minutes 57 seconds West for a distance of 18.27 feet to a point;

THENCE along the arc of a curve to the right having a radius of 66.33 feet and an arc length of 57.18 feet, being subtended by a chord of North 40 degrees 28 minutes 16 seconds West for a distance of 55.42 feet to a point on the northerly right-of-way of said Alexander Road;

THENCE proceed along said northerly right-of-way of Alexander Road the following courses and distances: South 89 degrees 17 minutes 15 seconds East for a distance of 3.20 feet to a point;

THENCE proceed along the northerly right-of-way of Alexander Road along the arc of a curve to the left having a radius of 811.60 feet and an arc length of 166.35 feet, being subtended by a chord of North 84 degrees 39 minutes 19 seconds East for a distance of 166.06 feet to a one-half inch reinforcing bar;

THENCE North 78 degrees 47 minutes 19 seconds East for a distance of 112.07 feet to a one-half inch reinforcing bar;

THENCE along the arc of a curve to the left having a radius of 167.00 feet and an arc length of 77.08 feet, being subtended by a chord of North 65 degrees 30 minutes 08 seconds East for a distance of 76.40 feet to a point;

THENCE North 52 degrees 43 minutes 34 seconds East, for a distance of 56.30 feet to a point;

THENCE along the arc of a curve to the right having a radius of 268.00 feet and an arc length of 236.32 feet, being subtended by a chord of North 89 degrees 21 minutes 28 seconds East for a distance of 228.74 feet to a point;

THENCE along the arc of a curve to the left having a radius of 40.00 feet and an arc length of 62.31 feet, being subtended by a chord of North 69 degrees 59 minutes 33 seconds East for a distance of 56.20 feet to a point on the aforesaid northwesterly right-of-way of Phipps Boulevard;

THENCE proceed along said northwesterly right-of-way of Phipps Boulevard the following courses and distances: South 25 degrees 21 minutes 58 seconds West, for a distance of 92.09 feet to a point;

THENCE along the arc of a curve to the right having a radius of 583.12 feet and an arc length of 64.61 feet, being subtended by a chord of South 28 degrees 32 minutes 26 seconds West for a distance of 64.58 feet to THE POINT OF BEGINNING.

SAID TRACT contains an area of 0.9174 acres or 39,962 square feet.

EXHIBIT "B"ESTATES TRACT

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 44, 17th District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING, commence at the intersection of the easternmost right-of-way line of North Stratford (a 50-foot right-of-way) and the southernmost right-of-way line of Longleaf Drive (a 50-foot right-of-way); proceed thence along the aforesaid southernmost right-of-way line of Longleaf Drive, North 85 degrees 52 minutes 54 seconds East a distance of 224.75 feet to a point; proceed thence, departing from the aforesaid southern right-of-way line of Longleaf Drive, South 00 degrees 31 minutes 47 seconds West a distance of 181.54 feet to an iron pin set, which iron pin set marks the POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS ESTABLISHED proceed thence South 89 degrees 27 minutes 18 seconds East a distance of 219.16 feet to a one inch open top pipe found; proceed thence along the southern boundary of lots now or formerly belonging to Virginia C. Kennedy, Mary L. Adams and Craig G. Adams and Selma M. Markwood and Diane M. Thompson, North 85 degrees 42 minutes 25 seconds East a distance of 310.03 feet to a three quarter inch open top pipe found; proceed thence along the southern boundary of lots now or formerly belonging to Rozanne Dibble and Mrs. Lee H. Wysong, South 58 degrees 28 minutes 03 seconds East a distance of 143.22 feet to an iron pin set; proceed thence South 31 degrees 33 minutes 41 seconds West a distance of 373.09 feet to an iron pin set; proceed thence South 14 degrees 06 minutes 39 seconds East a distance of 124.98 feet to an iron pin set; proceed thence along the arc of a curve to the right an arc distance of 77.18 feet to a point; said arc having a radius of 167.00 feet and being subtended by a chord bearing South 65 degrees 31 minutes 56 seconds West 76.50 feet in length; proceed thence South 78 degrees 46 minutes 22 seconds West a distance of 112.05 feet to a point; proceed thence along the arc of a curve to the right an arc distance of 166.25 feet to a point, said arc having a radius of 811.60 feet and being subtended by a chord bearing South 84 degrees 38 minutes 35 seconds West 165.96 feet in length; proceed thence North 89 degrees 29 minutes 10 seconds West a distance of 17.11 feet to a point; proceed thence North 89 degrees 29 minutes 11 seconds West a distance of 128.98 feet to an iron pin set (which iron pin is located 1.96 feet to the South of a three-quarter inch open top pipe); proceed thence along the eastern boundary of lots now or formerly belonging to Constance McKellar, Jane Kaufmann, Galen B. Kilburn, Sr., Christine Franz and Pattie M. Kraus North 00 degrees 31 minutes 03 seconds East a distance of 559.67 feet to an iron pin set, which iron pin set marks the POINT OF BEGINNING.

The aforesaid tract or parcel of land being more particularly described as "Tract A" on that certain Boundary Survey & Easement Exhibit of Estates at Phipps prepared for Park Regency Partners, L.P., The Bank of Nova Scotia and Mellon Bank, N.A., Lehman Brothers Holdings, Inc. and Chicago Title Insurance Company by W. L. Jorden & Co., Inc., dated November 12, 1998, last revised March 17, 1999, and containing approximately 6.7132 acres of land.

EXHIBIT "C"PARK REGENCY TRACT

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 44, 17th District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING of the tract of land herein described, commence at the intersection of the eastern right-of-way line of North Stratford (50-foot right-of-way) with the southern right-of-way line of Longleaf Drive (50-foot right-of-way); running thence along said right-of-way line of Longleaf Drive, North 85 degrees 52 minutes 54 seconds East a distance of 224.75 feet to a point; thence leaving said right-of-way line, and running South 00 degrees 31 minutes 47 seconds West a distance of 181.54 feet to an iron pin set; running thence South 89 degrees 27 minutes 18 seconds East a distance of 219.67 feet to a 1-inch open top pipe found; running thence North 85 degrees 42 minutes 25 seconds East a distance of 310.03 feet to a 3/4 inch open top pipe found; running thence South 58 degrees 27 minutes 03 seconds East a distance of 143.22 feet to an iron pin set, said iron pin set being the TRUE POINT OF BEGINNING;

FROM THE TRUE POINT OF BEGINNING thus established, running thence South 31 degrees 33 minutes 41 seconds West a distance of 373.09 feet to an iron pin set; running thence South 14 degrees 06 minutes 39 seconds East a distance of 123.98 feet to an iron pin set; running thence North 52 degrees 42 minutes 58 seconds East a distance of 56.30 feet to a point; running thence northeasterly along the arc of a curve to the right, said arc being subtended by a chord line having bearing of North 89 degrees 20 minutes 52 seconds East and a length of 228.74 feet, said curve having a radius of 268.00 feet, an arc distance of 236.32 feet to a point; running thence northeasterly along the arc of a curve to the left, said arc being subtended by a chord line having a bearing of North 69 degrees 58 minutes 57 seconds East and a length of 56.20 feet, said curve having a radius of 40.00 feet, an arc distance of 62.31 feet to a point located on the northwestern right-of-way line of Phipps Boulevard (formerly Wieuca Connector); running thence along said right-of-way line, North 25 degrees 21 minutes 22 seconds East a distance of .06 feet to a point; running thence along said right-of-way line, North 29 degrees 41 minutes 30 seconds East a distance of 152.24 feet to a point; running thence northeasterly along the arc of a curve to the right in said right-of-way line, said arc being subtended by a chord line having a bearing of North 32 degrees 19 minutes 56 seconds East and a length of 89.20 feet, said curve having a radius of 563.37 feet, an arc distance of 89.29 feet to a point; running thence North 58 degrees 32 minutes 02 seconds West a distance of 54.25 feet to a point; running thence North 58 degrees 27 minutes 03 seconds West a distance of 279.47 feet to the iron pin set at the TRUE POINT OF BEGINNING.

Said tract of land containing approximately 2.6992 acres and designated as "Tract B" according to that certain Boundary Survey & Easement Exhibit of Estates at Phipps prepared for Park Regency Partners L.P., The Bank of Nova Scotia and Mellon Bank, N.A., Lehman Brothers Holdings, Inc. and Chicago Title Insurance Company by W.L. Jordan & Co., Inc. dated November 12, 1998, last revised March 17, 1999.

EXHIBIT "D"

CONDO I TRACT

ALL THAT TRACT or parcel of land lying in or being in Land Lot 44 and Land Lot 45 of the 17<sup>th</sup> District, City of Atlanta, Fulton County, Georgia, and being more particularly described as follows:

Beginning at the southwest end of the miter of intersection of the northerly right-of-way of Lenox Road (also known as State Route 141 Connector) (formerly known as Buckhead Loop) (variable right-of-way width) with the northwesterly right-of-way of Phipps Boulevard (formerly known as Wieuca Connector) (96-foot wide right-of-way at this point), said point being the POINT OF BEGINNING;

THENCE proceed along said northerly right-of-way of Lenox Road the following courses and distances: Along the arc of a curve to the left having a radius of 1024.93 feet and an arc length of 77.92 feet, being subtended by a chord of North 82 degrees 15 minutes 46 seconds West for a distance of 77.90 feet to a point;

THENCE along the arc of a curve to the left having a radius of 1024.93 feet and an arc length of 39.49 feet, being subtended by a chord of North 84 degrees 47 minutes 16 seconds West for a distance of 39.49 feet to a point;

THENCE departing said northerly right-of-way of Lenox Road, North 00 degrees 31 minutes 03 seconds East for a distance of 378.07 feet to a point on the southeasterly right-of-way of Alexander Road (a private road) (variable right-of-way width);

THENCE proceed along said southeasterly right-of-way of Alexander Road, North 78 degrees 46 minutes 58 seconds East for a distance of 52.58 feet to a "P.K." nail in concrete sidewalk;

THENCE depart said southeasterly right-of-way of Alexander Road, South 11 degrees 15 minutes 17 seconds East for a distance of 24.17 feet to a point; THENCE along the arc of a curve to the left having a radius of 133.65 feet and an arc length of 112.19 feet, being subtended by a chord of South 35 degrees 18 minutes 13 seconds East for a distance of 108.93 feet to a point;

THENCE South 59 degrees 21 minutes 09 seconds East for a distance of 140.78 feet to a one-half inch reinforcing bar at the aforesaid northwesterly right-of-way of Phipps Boulevard;

THENCE proceed along said northwesterly right-of-way of Phipps Boulevard the following courses and distances: Along the arc of a curve to the left having a radius of 626.47 feet and an arc length of 84.57 feet, being subtended by a chord of South 32 degrees 44 minutes 49 seconds West for a distance of 84.50 feet to a one-half inch reinforcing bar;

THENCE South 20 degrees 02 minutes 55 seconds West for a distance of 20.06 feet to a point; THENCE South 20 degrees 25 minutes 26 seconds West for a distance of 100.03 feet to a point;

THENCE South 19 degrees 53 minutes 51 seconds West for a distance of 17.73 feet to a point on the northeast end of the aforesaid miter of intersection of the northerly right-of-way of Lenox road and Phipps Boulevard;

THENCE proceed along said miter of intersection, South 62 degrees 21 minutes 27 seconds West for a distance of 38.07 feet to the POINT OF BEGINNING;

SAID PROPERTY contains an area of 1.3860 acres or 60,373 square feet.

EXHIBIT "E"CONDO II TRACTParcel No. 1 - Condo II Property:

ALL THAT TRACT or parcel of land lying in or being in Land Lot 44 and Land Lot 45 of the 17<sup>th</sup> District, City of Atlanta, Fulton County, Georgia, and being more particularly described as follows:

To find the Point of Beginning, Commence at the southwest end of the miter of intersection of the northerly right-of-way of Lenox Road (also known as State Route 141 Connector) (formerly known as Buckhead Loop) (variable right-of-way width) with the northwesterly right-of-way of Phipps Boulevard (formerly known as Wieuca Connector) (96-foot wide right-of-way at this point), said point being the POINT OF COMMENCEMENT;

THENCE proceed along said northerly and northwesterly right-of-way of Lenox Road the following courses and distances: Along the arc of a curve to the left having a radius of 1029.93 feet and an arc length of 77.92 feet, being subtended by a chord of North 82 degrees 15 minutes 46 seconds West for a distance of 77.90 feet to a point;

THENCE along the arc of a curve to the left having a radius of 1024.93 feet and an arc length of 39.49 feet, being subtended by a chord of North 84 degrees 47 minutes 16 seconds West for a distance of 39.49 feet to a point;

THENCE along the arc of a curve to the left having a radius of 1024.93 feet and an arc length of 165.21 feet, being subtended by a chord of South 89 degrees 29 minutes 27 seconds West for a distance of 165.03 feet to the POINT OF BEGINNING;

The POINT OF BEGINNING thus established, THENCE continue along the arc of a curve to the left having a radius of 1024.93 feet and an arc length of 219.96 feet, being subtended by a chord of South 78 degrees 43 minutes 30 seconds West for a distance of 219.54 feet to a point;

THENCE South 73 degrees 57 minutes 50 seconds West for a distance of 2.19 feet to a point;

THENCE depart said northerly right-of-way of Lenox Road, North 00 degrees 31 minutes 03 seconds East for a distance of 113.82 feet to a point;

THENCE North 45 degrees 31 minutes 03 seconds East for a distance of 14.14 feet to a point;

THENCE North 00 degrees 31 minutes 03 seconds East for a distance of 29.98 feet to a point at the southern terminus of proposed extension of Alexander Road (a private road) (variable right-of-way width);

THENCE proceed along the easterly and southerly right-of-way of said proposed extension of Alexander Road the following courses and distances: North 00 degrees 31 minutes 03 seconds East for a distance of 240.00 feet to a point;

THENCE Along the arc of a curve to the right having a radius of 14.50 feet and an arc length of 22.78 feet, being subtended by a chord of North 45 degrees 31 minutes 03 seconds East for a distance of 20.51 feet to a point;

THENCE South 89 degrees 28 minutes 57 seconds East for a distance of 174.98 feet to a point on the southwesterly right-of-way of Alexander Road (a private road) (variable right-of-way width);



THENCE proceed along said southwesterly right-of-way of Alexander Road along the arc of a curve to the left having a radius of 66.33 feet and an arc length of 18.33 feet, being subtended by a chord of South 73 degrees 04 minutes 57 seconds East for a distance of 18.27 feet to a point;

THENCE depart said southwesterly right-of-way of Alexander Road, South 00 degrees 31 minutes 03 seconds West for a distance of 357.66 feet to the POINT OF BEGINNING;

SAID PROPERTY contains an area of 1.8317 acres or 79,790 square feet.

**Parcel No. 2 - ALEXANDER ROAD EXTENSION TRACT:**

ALL THAT TRACT or parcel of land lying in or being in Land Lot 44 and Land Lot 45 of the 17<sup>th</sup> District, City of Atlanta, Fulton County, Georgia, and being more particularly described as follows:

To find the Point of Beginning, Commence at the southwest end of the miter of intersection of the northerly right-of-way of Lenox Road (also known as State Route 141 Connector) (formerly known as Buckhead Loop) (variable right-of-way width) with the northwesterly right-of-way of Phipps Boulevard (formerly known as Wieuca Connector) (96-foot wide right-of-way at this point), said point being the POINT OF COMMENCEMENT;

THENCE proceed along said northerly and northwesterly right-of-way of Lenox Road the following courses and distances: Along the arc of a curve to the left having a radius of 1029.93 feet and an arc length of 77.92 feet, being subtended by a chord of North 82 degrees 15 minutes 46 seconds West for a distance of 77.90 feet to a point;

THENCE along the arc of a curve to the left having a radius of 1024.93 feet and an arc length of 424.65 feet, being subtended by a chord of South 84 degrees 26 minutes 48 seconds West for a distance of 421.62 feet to a point;

THENCE South 73 degrees 57 minutes 50 seconds West for a distance of 2.19 feet to a point;

THENCE depart said northerly right-of-way of Lenox Road, North 00 degrees 31 minutes 03 seconds East for a distance of 113.82 feet to a point;

THENCE North 45 degrees 31 minutes 03 seconds East for a distance of 14.14 feet to a point;

THENCE North 00 degrees 31 minutes 03 seconds East for a distance of 29.98 feet to a point on the southern terminus of the proposed extension of Alexander Road (a private road) (variable right-of-way width), said point being the POINT OF BEGINNING;

The POINT OF BEGINNING thus established, thence run along said southern terminus, North 89 degrees 28 minutes 57 seconds West for a distance of 35.26 feet to a point on the western right-of-way of said proposed extension of Alexander Road;

THENCE along the westerly, northwesterly and northerly right of way of said extension of Alexander Road the following courses and distances: North 00 degrees 31 minutes 03 seconds East for a distance of 27.42 feet to a point;

THENCE North 53 degrees 46 minutes 22 seconds West for a distance of 7.68 feet to a point;

THENCE North 00 degrees 31 minutes 03 seconds East for a distance of 137.10 feet to a point;

THENCE North 89 degrees 28 minutes 57 seconds West for a distance of 18.00 feet to a point;

THENCE North 00 degrees 31 minutes 03 seconds East for a distance of 76.17 feet to a point;

THENCE North 45 degrees 31 minutes 03 seconds East for a distance of 72.53 feet to a point;

THENCE South 89 degrees 19 minutes 05 seconds East for a distance of 18.57 feet to a point;

THENCE South 89 degrees 28 minutes 26 seconds East for a distance of 129.00 feet to a one-half inch reinforcing bar;

THENCE South 89 degrees 17 minutes 15 seconds East for a distance of 13.76 feet to a point on the southwesterly right-of-way of Alexander Road (private roadway) (variable right-of-way width);

THENCE proceed along said southwesterly right-of-way of Alexander Road along the arc of a curve to the left having a radius of 66.33 feet and an arc length of 57.18 feet, being subtended by a chord of South 40 degrees 28 minutes 16 seconds East for a distance of 55.42 feet to a point;

THENCE depart said southwesterly right-of-way of Alexander Road and proceed along the southerly and easterly right-of-way of aforesaid proposed extension of Alexander Road, North 89 degrees 28 minutes 57 seconds West for a distance of 174.98 feet to a point;

THENCE along the arc of a curve to the left having a radius of 14.50 feet and an arc length of 22.78 feet, being subtended by a chord of South 45 degrees 31 minutes 03 seconds West for a distance of 20.51 feet to a point;

THENCE South 00 degrees 31 minutes 03 seconds West for a distance of 240.00 feet to THE POINT OF BEGINNING.

SAID PROPERTY contains an area of 0.4764 acres or 20,751 square feet.

EXHIBIT "F"APARTMENT TRACT

ALL THAT TRACT or parcel of land lying in or being in Land Lot 44 and Land Lot 45 of the 17<sup>th</sup> District, City of Atlanta, Fulton County, Georgia, and being more particularly described as follows:

To find the Point of Beginning, Commence at the southwest end of the miter of intersection of the northerly right-of-way of Lenox Road (also known as State Route 141 Connector) (formerly known as Buckhead Loop) (variable right-of-way width) with the northwesterly right-of-way of Phipps Boulevard (formerly known as Wieuca Connector) (96-foot wide right-of-way at this point), said point being the POINT OF COMMENCEMENT;

THENCE proceed along said northerly right-of-way of Lenox Road the following courses and distances: Along the arc of a curve to the left having a radius of 1029.93 feet and an arc length of 77.92 feet, being subtended by a chord of North 82 degrees 15 minutes 46 seconds West for a distance of 77.90 feet to a point;

THENCE along the arc of a curve to the left having a radius of 1024.93 feet and an arc length of 39.49 feet, being subtended by a chord of North 84 degrees 47 minutes 16 seconds West for a distance of 39.49 feet to the POINT OF BEGINNING;

The POINT OF BEGINNING thus established, THENCE continue along said northerly right-of-way of Lenox Road the following courses and distances: Along the arc of a curve to the left having a radius of 1024.93 feet and an arc length of 165.21 feet, being subtended by a chord of South 89 degrees 29 minutes 27 seconds West for a distance of 165.02 feet to a point;

THENCE depart said northerly right-of-way of Lenox Road, North 00 degrees 31 minutes 03 seconds East for a distance of 357.66 feet to a point located on the southern right-of-way line of Alexander Road (a private road) (variable right-of-way width);

THENCE proceed along said southerly right-of-way line of Alexander Road along the arc of a curve to the left having a radius of 66.33 feet and an arc length of 14.86 feet, being subtended by a chord of South 87 degrees 24 minutes 51 seconds East for a distance of 14.83 feet to a point;

THENCE along the arc of a curve to the left having a radius of 861.30 feet and an arc length of 110.94 feet, being subtended by a chord of North 82 degrees 28 minutes 22 seconds East for a distance of 110.86 feet to a point;

THENCE North 78 degrees 46 minutes 58 seconds East for a distance of 41.28 feet to a point;

THENCE depart said southerly right-of-way of Alexander Road, South 00 degrees 31 minutes 03 seconds West for a distance of 378.07 feet to the POINT OF BEGINNING;

SAID PROPERTY contains an area of 1.3735 acres or 59,831 square feet.

EXHIBIT "G"

SINGLE-FAMILY TRACT

ALL THAT TRACT or parcel of land lying in or being in Land Lot 44 and Land Lot 45 of the 17<sup>th</sup> District, City of Atlanta, Fulton County, Georgia, and being more particularly described as follows:

To find the Point of Beginning, Commence at the southwest end of the miter of intersection of the northerly right-of-way of Lenox Road (also known as State Route 141 Connector) (formerly known as Buckhead Loop) (variable right-of-way width) with the northwesterly right-of-way of Phipps Boulevard (formerly known as Wieuca Connector) (96-foot wide right-of-way at this point), said point being the POINT OF COMMENCEMENT;

THENCE proceed along said northerly right-of-way of Lenox Road the following courses and distances: Along the arc of a curve to the left having a radius of 1029.93 feet and an arc length of 77.92 feet, being subtended by a chord of North 82 degrees 15 minutes 46 seconds West for a distance of 77.90 feet to a point;

THENCE along the arc of a curve to the left having a radius of 1024.93 feet and an arc length of 424.65 feet, being subtended by a chord of South 84 degrees 26 minutes 48 seconds West for a distance of 421.62 feet to a point;

THENCE South 73 degrees 57 minutes 50 seconds West for a distance of 2.19 feet to the POINT OF BEGINNING;

The POINT OF BEGINNING thus established, THENCE continue along said northerly right-of-way of Lenox Road, South 73 degrees 57 minutes 50 seconds West for a distance of 219.14 feet to a point;

THENCE depart said northerly right-of-way of Lenox Road, North 00 degrees 47 minutes 37 seconds East for a distance of 48.21 feet to a point on the southerly end of the cul-de-sac right-of-way of North Stratford Road (63.50-foot right-of-way radius);

THENCE proceed along the southerly, southeasterly, easterly and northeasterly right-of-way of said cul-de-sac of North Stratford Road, along a curve to the left having a radius of 63.50 feet and an arc length of 185.33 feet, being subtended by a chord of North 08 degrees 41 minutes 53 seconds East for a distance of 126.21 feet to a point;

THENCE along a mitered portion of said northeasterly right-of-way cul-de-sac of North Stratford Road, North 45 degrees 49 minutes 26 seconds West for a distance of 18.83 feet to a point where the tangential, or straight, section of said North Stratford Road has a right-of-way width of 50 feet;

THENCE proceed along the east side of said straight section of North Stratford Road the following courses and distances: North 02 degrees 46 minutes 47 seconds East for a distance of 58.19 feet to a point;

THENCE North 00 degrees 11 minutes 48 seconds East for a distance of 92.82 feet to a point;

THENCE depart said east right-of-way of North Stratford Road, South 74 degrees 19 minutes 33 seconds East for a distance of 80.57 feet to a point;

THENCE South 53 degrees 46 minutes 22 seconds East for a distance of 116.32 feet to a point at the westerly right-of-way of a proposed extension of Alexander Road (a private road) (variable-width right-of-way);

THENCE proceed along the westerly and southerly right-of-way of said proposed extension of Alexander Road the following courses and distances: South 53 degrees 46 minutes 22 seconds East for a distance of 7.68 feet;

THENCE South 00 degrees 31 minutes 03 seconds West for a distance of 27.42 feet to a point;

THENCE South 89 degrees 28 minutes 57 seconds East for a distance of 35.26 feet to a point;

THENCE depart the southerly right-of-way of said proposed extension of Alexander Road, South 00 degrees 31 minutes 03 seconds West for a distance of 29.98 feet to a point;

THENCE South 45 minutes 31 minutes 03 seconds West for a distance of 14.14 feet to a point;

THENCE South 00 degrees 31 minutes 03 seconds West for a distance of 113.82 feet to the POINT OF BEGINNING;

SAID PROPERTY contains an area of 1.0854 acres or 47,278 square feet.

EXHIBIT "H"PARK TRACT

ALL THAT TRACT or parcel of land lying in or being in Land Lot 44 of the 17<sup>th</sup> District, City of Atlanta, Fulton County, Georgia, and being more particularly described as follows:

To find the Point of Beginning, Commence at the southwest end of the miter of intersection of the northerly right-of-way of Lenox Road (also known as State Route 141 Connector) (formerly known as Buckhead Loop) (variable right-of-way width) with the northwesterly right-of-way of Phipps Boulevard (formerly known as Wieuca Connector) (96-foot wide right-of-way at this point), said point being the POINT OF COMMENCEMENT;

THENCE proceed along said northerly right-of-way of Lenox Road the following courses and distances: Along the arc of a curve to the left having a radius of 1029.93 feet and an arc length of 77.92 feet, being subtended by a chord of North 82 degrees 15 minutes 46 seconds West for a distance of 77.90 feet to a point;

THENCE along the arc of a curve to the left having a radius of 1024.93 feet and an arc length of 424.65 feet, being subtended by a chord of South 84 degrees 26 minutes 48 seconds West for a distance of 421.62 feet to a point;

THENCE South 73 degrees 57 minutes 50 seconds West for a distance of 221.33 feet to a point; THENCE depart said northerly right-of-way of Lenox Road, North 00 degrees 47 minutes 37 seconds East for a distance of 48.21 feet to a point on the southerly end of the cul-de-sac right-of-way of North Stratford Road (63.50-foot right-of-way radius);

THENCE proceed along southerly, southeasterly, easterly and northeasterly right-of-way of said cul-de-sac of North Stratford Road, along a curve to the left having a radius of 63.50 feet and an arc length of 185.32 feet, being subtended by a chord of North 08 degrees 41 minutes 53 seconds East for a distance of 126.21 feet to a point;

THENCE along a mitered portion of said northeasterly right-of-way cul-de-sac of North Stratford Road, North 45 degrees 49 minutes 26 seconds West for a distance of 18.83 feet to a point where the tangential, or straight, section of said North Stratford Road has a right-of-way width of 50 feet;

THENCE proceed along the east side of said straight section of North Stratford Road the following courses and distances: North 02 degrees 46 minutes 47 seconds East for a distance of 58.19 feet to a point; THENCE North 00 degrees 11 minutes 48 seconds East for a distance of 92.82 feet to the POINT OF BEGINNING;

The POINT OF BEGINNING thus established, THENCE continue along said east right-of-way of Stratford Road, North 00 degrees 11 minutes 48 seconds East for a distance of 176.19 feet to a point; THENCE depart said east right-of-way of Stratford Road, South 89 degrees 19 minutes 05

seconds East for a distance of 206.49 feet to a point on the northwesterly right-of-way of the proposed extension of Alexander Road (a private road) (variable-width right-of-way);

THENCE proceed along the northwesterly and westerly right-of-way of said proposed extension of Alexander Road the following courses and distances: South 45 degrees 31 minutes 03 seconds West for a distance of 72.53 feet to a point; THENCE South 00 degrees 31 minutes 03 seconds West for a distance of 76.17 feet to a point; THENCE South 89 degrees 28 minutes 57 seconds East for a distance of 18.00 feet to a point; THENCE South 00 degrees 31 minutes 03 seconds West for a distance of 137.10 feet to a point; THENCE depart said westerly right-of-way of the proposed extension of Alexander Road, North 53 degrees 46 minutes 22 seconds West for a distance of 116.32 feet to a point; THENCE North 74 degrees 19 minutes 33 seconds West for a distance of 80.57 feet to the POINT OF BEGINNING;

Said property contains 0.8132 acres or 35,423 square feet.

EXHIBIT "I"

DRAINAGE PLAN

[See attached consolidated "Grading, Drainage and Utility Exhibit"]





LAND 107X 44 48 1984 DISTRICT

CITY OF ATLANTA

**FALCON COUNTY, GEORGIA**

## GRADING, DRAINAGE AND UTILITY EXHIBIT

1775 The Exchange  
Suite 312  
Atlanta, Georgia 30339  
Tel 770.951.2495  
Fax 770.951.2498  
[www.kungun.com](http://www.kungun.com)

11-11-68

EXHIBIT "J"

UTILITIES PLAN

[See consolidated "Grading, Drainage and Utility Exhibit" on Exhibit I]

EXHIBIT "K"

ACCESS EASEMENT AREA

Parcel 1 -Alexander Road Private Roadway Tract:

ALL THAT TRACT or parcel of land lying in or being in Land Lot 44 of the 17th District, City of Atlanta, Fulton County, Georgia, and being more particularly described as follows:

To find the POINT OF BEGINNING, commence at the southwest end of the miter of intersection of the northerly right-of-way of Lenox Road (also known as State Route 141 Connector) (formerly known as Buckhead Loop) (variable right-of-way width) with the northwesterly right-of-way of Phipps Boulevard (formerly known as Wieuca Connector) (96 foot wide right-of-way width at this point), said point being the POINT OF COMMENCEMENT;

THENCE proceed along said mitered intersection North 62 degrees 21 minutes 27 seconds East for a distance of 38.07 feet to a point;

THENCE proceed along said northwesterly right-of-way of Phipps Boulevard the following courses and distances: North 19 degrees 53 minutes 51 seconds East for a distance of 17.73 feet to a point;

THENCE North 20 degrees 25 minutes 26 seconds East for a distance of 100.03 feet to a point;

THENCE North 20 degrees 02 minutes 55 seconds East for a distance of 20.06 feet to a one-half inch reinforcing bar;

THENCE along the arc of a curve to the right having a radius of 626.47 feet and an arc length of 84.57 feet, being subtended by a chord of North 32 degrees 44 minutes 49 seconds East for a distance of 84.50 feet to a one-half inch reinforcing bar;

THENCE along the arc of a curve to the right having a radius of 626.47 feet and an arc length of 34.56 feet, being subtended by a chord of North 38 degrees 11 minutes 38 seconds East for a distance of 34.56 feet to a one-half inch reinforcing bar;

THENCE North 39 degrees 49 minutes 40 seconds East for a distance of 118.53 feet to a 3-inch brass disk in concrete sidewalk;

THENCE along the arc of a curve to the left having a radius of 583.11 feet and an arc length of 81.81 feet, being subtended by a chord of North 35 degrees 42 minutes 12 seconds East for a distance of 81.75 feet to a point on the southerly right-of-way of Alexander Road (a private road) (variable right-of-way width), said point being the POINT OF BEGINNING;

THE POINT OF BEGINNING thus established, thence depart said northwesterly right-of-way of Phipps Boulevard and proceed along the southerly and southwesterly right-of-way of said Alexander Road the following courses and distances: Along a curve to the left having a radius of 40.00 feet and an arc length of 69.14 feet, being subtended by a chord of North 17 degrees 48 minutes 33 seconds West for a distance of 60.85 feet to a "P.K." nail in concrete sidewalk;

THENCE along a curve to the left having a radius of 196.00 feet and an arc length of 166.15 feet, being subtended by a chord of South 88 degrees 22 minutes 55 seconds West for a distance of 161.22 feet to a one-half inch reinforcing bar;

THENCE South 64 degrees 05 minutes 48 seconds West for a distance of 63.39 feet to a point;

THENCE along a curve to the right having a radius of 200.00 feet and an arc length of 51.26 feet, being subtended by a chord of South 71 degrees 26 minutes 23 seconds West for a distance of 51.12 feet to a point;

THENCE South 78 degrees 46 minutes 58 seconds West for a distance of 143.33 feet to a point;

THENCE along the arc of a curve to the right having a radius of 861.30 feet and an arc length of 110.94 feet, being subtended by a chord of South 82 degrees 28 minutes 22 seconds West for a distance of 110.86 feet to a point;

THENCE along the arc of a curve to the right having a radius of 66.33 feet and an arc length of 14.86 feet, being subtended by a chord of North 87 degrees 24 minutes 51 seconds West for a distance of 14.83 feet to a point;

THENCE along the arc of a curve to the right having a radius of 66.33 feet and an arc length of 18.33 feet, being subtended by a chord of North 73 degrees 04 minutes 57 seconds West for a distance of 18.27 feet to a point;

THENCE along the arc of a curve to the right having a radius of 66.33 feet and an arc length of 57.18 feet, being subtended by a chord of North 40 degrees 28 minutes 16 seconds West for a distance of 55.42 feet to a point on the northerly right-of-way of said Alexander Road;

THENCE proceed along said northerly right-of-way of Alexander Road the following courses and distances: South 89 degrees 17 minutes 15 seconds East for a distance of 3.20 feet to a point;

THENCE proceed along the northerly right-of-way of Alexander Road along the arc of a curve to the left having a radius of 811.60 feet and an arc length of 166.35 feet, being subtended by a chord of North 84 degrees 39 minutes 19 seconds East for a distance of 166.06 feet to a one-half inch reinforcing bar;

THENCE North 78 degrees 47 minutes 19 seconds East for a distance of 112.07 feet to a one-half inch reinforcing bar;

THENCE along the arc of a curve to the left having a radius of 167.00 feet and an arc length of 77.08 feet, being subtended by a chord of North 65 degrees 30 minutes 08 seconds East for a distance of 76.40 feet to a point;

THENCE North 52 degrees 43 minutes 34 seconds East, for a distance of 56.30 feet to a point;

THENCE along the arc of a curve to the right having a radius of 268.00 feet and an arc length of 236.32 feet, being subtended by a chord of North 89 degrees 21 minutes 28 seconds East for a distance of 228.74 feet to a point;

THENCE along the arc of a curve to the left having a radius of 40.00 feet and an arc length of 62.31 feet, being subtended by a chord of North 69 degrees 59 minutes 33 seconds East for a distance of 56.20 feet to a point on the aforesaid northwesterly right-of-way of Phipps Boulevard;

THENCE proceed along said northwesterly right-of-way of Phipps Boulevard the following courses and distances: South 25 degrees 21 minutes 58 seconds West, for a distance of 92.09 feet to a point;

THENCE along the arc of a curve to the right having a radius of 583.12 feet and an arc length of 64.61 feet, being subtended by a chord of South 28 degrees 32 minutes 26 seconds West for a distance of 64.58 feet to THE POINT OF BEGINNING.

SAID TRACT contains an area of 0.9174 acres or 39,962 square feet.

**Parcel 2 -Alexander Road Extension Access Tract:**

ALL THAT TRACT or parcel of land lying in or being in Land Lot 44 and Land Lot 45 of the 17<sup>th</sup> District, City of Atlanta, Fulton County, Georgia, and being more particularly described as follows:

To find the Point of Beginning, Commence at the southwest end of the miter of intersection of the northerly right-of-way of Lenox Road (also known as State Route 141 Connector) (formerly known as Buckhead Loop) (variable right-of-way width) with the northwesterly right-of-way of Phipps Boulevard (formerly known as Wieuca Connector) (96-foot wide right-of-way at this point), said point being the POINT OF COMMENCEMENT;

THENCE proceed along said northerly and northwesterly right-of-way of Lenox Road the following courses and distances: Along the arc of a curve to the left having a radius of 1029.93 feet and an arc length of 77.92 feet, being subtended by a chord of North 82 degrees 15 minutes 46 seconds West for a distance of 77.90 feet to a point;

THENCE along the arc of a curve to the left having a radius of 1029.93 feet and an arc length of 39.49 feet, being subtended by a chord of North 84 degrees 47 minutes 16 seconds West for a distance of 39.49 feet to a point;

THENCE along the arc of a curve to the left having a radius of 1029.93 feet and an arc length of 165.21 feet, being subtended by a chord of South 89 degrees 29 minutes 27 seconds West for a distance of 165.03 feet to a point;

THENCE continue along the arc of a curve to the left having a radius of 1024.93 feet and an arc length of 219.96 feet, being subtended by a chord of South 78 degrees 43 minutes 30 seconds West for a distance of 219.54 feet to a point;

THENCE depart said northerly right-of-way of Lenox Road, North 00 degrees 31 minutes 03 seconds East for a distance of 113.82 feet to a point;

THENCE North 45 degrees 31 minutes 03 seconds East for a distance of 14.14 feet to a point;

THENCE North 00 degrees 31 minutes 03 seconds East for a distance of 269.98 feet to a point, said point being the POINT OF BEGINNING;

THE POINT OF BEGINNING thus established, thence run North 84 degrees 30 minutes 57 seconds West for a distance of 59.72 feet to a point;

THENCE North 45 degrees 31 minutes 03 seconds East for a distance of 72.53 feet to a point;

THENCE South 89 degrees 19 minutes 05 seconds East for a distance of 18.57 feet to a point;

THENCE South 89 degrees 28 minutes 26 seconds East for a distance of 129.00 feet to a point;

THENCE South 89 degrees 17 minutes 15 seconds East for a distance of 13.76 feet to a point on the northwest right-of-way of Alexander Road (private roadway) (variable right-of-way width);

THENCE proceed along the southwesterly right-of-way of Alexander Road along the arc of a curve to the left having a radius of 66.33 feet and an arc length of 57.18 feet, being subtended by a chord of South 40 degrees 28 minutes 16 seconds East for a distance of 55.42 feet to a point;

THENCE depart said southerly right-of-way of Alexander Road, North 89 degrees 28 minutes 57 seconds West for a distance of 174.98 feet to a point;

THENCE along the arc of a curve to the left having a radius of 14.50 feet and an arc length of 22.78 feet, being subtended by a chord of South 45 degrees 31 minutes 03 seconds West for a distance of 20.51 feet to the POINT OF BEGINNING.

EXHIBIT "L"

SITE PLAN

[See consolidated "Grading, Drainage and Utility Exhibit" on Exhibit I]

EXHIBIT "M"LINE 1 AND 2 SANITARY SEWER EASEMENT AREA

ALL THAT TRACT or parcel of land lying in or being in Land Lot 44 of the 17<sup>th</sup> District, City of Atlanta, Fulton County, Georgia, and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING commence at the intersection of the easternmost right-of-way line of North Stratford (a 50-foot right-of-way) and the southernmost right-of-way line of Longleaf Drive (a 50-foot right-of-way), proceed thence along the aforesaid southernmost right-of-way line of Longleaf Drive North 85 degrees 52 minutes 54 seconds East a distance of 224.75 feet to a point; proceed thence, departing from the aforesaid southern right-of-way line of Longleaf Drive, South 00 degrees 31 minutes 47 seconds West a distance of 181.54 feet to an iron pin set; proceed thence South 89 degrees 27 minutes 18 seconds East a distance of 219.67 feet to a one inch open top pipe found; proceed thence along the southern boundary of lots now or formerly belonging to Virginia C. Kennedy, Mary L. Adams and Craig G. Adams and Selma M. Markwood and Diane M. Thompson, North 85 degrees 42 minutes 35 seconds East a distance of 310.03 feet to a three quarter inch open top pipe found; proceed thence along the southern boundary of lots now or formerly belong to Rozanne Dibble and Mrs. Lee H. Wysong, South 58 degrees 27 minutes 03 seconds East a distance of 143.22 feet to an iron pin set, proceed thence South 31 degrees 33 minutes 41 seconds West a distance of 165.53 feet to a pint, which point marks THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS ESTABLISHED proceed thence South 31 degrees 33 minutes 41 seconds West a distance of 10.57 feet to a point; proceed thence North 39 degrees 28 minutes 15 seconds West a distance of 84.03 feet to a point; proceed thence South 85 degrees 57 minutes 18 seconds West a distance of 362.40 feet to a point; proceed thence Due South a distance of 392.31 feet to a point; proceed thence South 72 degrees 53 minutes 36 seconds West a distance of 13.53 feet to a point; proceed thence North 89 degrees 29 minutes 10 seconds West a distance of 6.91 feet to a point; proceed thence North 89 degrees 29 minutes 11 seconds West a distance of 26.12 feet to a point; proceed thence North 72 degrees 53 minutes 36 seconds East a distance of 37.65 feet to a point; proceed thence Due North a distance of 394.24 feet to a point; proceed thence North 85 degrees 57 minutes 18 seconds East a distance of 376.88 feet to a point; proceed thence South 39 degrees 28 minutes 15 seconds East a distance of 85.75 feet to a point, which point marks the POINT OF BEGINNING.

The aforesaid tract or parcel of land lying more particularly and collectively described as "Sewer Easement Line #1" and "Sewer Easement Line #2" on that certain Boundary Survey & Easement Exhibit of Estates at Phipps prepared for Park Regency Partners L.P., The Bank of Nova Scotia and Mellon Bank, N.A., Lehman Brothers Holdings, Inc. and Chicago Title Insurance Company by W.L. Jorden & Co., Inc. dated November 12, 1998, last revised March 17, 1999.



EXHIBIT "N"LINE 3 SANITARY SEWER EASEMENT AREA

ALL THAT TRACT or parcel of land lying in or being in Land Lot 44 of the 17<sup>th</sup> District, City of Atlanta, Fulton County, Georgia, and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING commence at the intersection of the easternmost right-of-way line of North Stratford (a 50-foot right-of-way) and the southernmost right-of-way line of Longleaf Drive (a 50-foot right-of-way), proceed thence along the aforesaid southernmost right-of-way line of Longleaf Drive North 85 degrees 52 minutes 54 seconds East a distance of 224.75 feet to a point; proceed thence, departing from the aforesaid southern right-of-way line of Longleaf Drive, South 00 degrees 31 minutes 47 seconds West a distance of 181.54 feet to an iron pin set; proceed thence South 00 degrees 31 minutes 03 seconds West a distance of 559.67 feet to an iron pin set, which iron pin set is 1.96 feet south of a 3/4 inch open top pipe found; proceed thence South 89 degrees 29 minutes 11 seconds East a distance of 102.86 feet to a point, which point is the POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS ESTABLISHED, proceed thence South 89 degrees 29 minutes 11 seconds East a distance of 26.12 feet to a point; proceed thence South 89 degrees 29 minutes 10 seconds East a distance of 6.91 feet to a point; proceed thence South 72 degrees 53 minutes 36 seconds West a distance of 54.07 feet to a point; proceed thence South 72 degrees 53 minutes 36 seconds West a distance of 76.85 feet to a point; proceed thence North 17 degrees 06 minutes 24 seconds West a distance of 10.00 feet to a point; proceed thence North 72 degrees 53 minutes 36 seconds West a distance of 99.44 feet to a point; which point marks the POINT OF BEGINNING.

The aforesaid tract or parcel of land lying more particularly described as "Sewer Easement Line #3" on that certain Boundary Survey & Easement Exhibit of Estates at Phipps prepared for Park Regency Partners L.P., The Bank of Nova Scotia and Mellon Bank, N.A., Lehman Brothers Holdings, Inc. and Chicago Title Insurance Company by W.L. Jorden & Co., Inc. dated November 12, 1998, last revised March 17, 1999.

EXHIBIT "O"PARK REGENCY DRAINAGE EASEMENT AREA

ALL THAT TRACT or parcel of land lying in or being in Land Lot 44 of the 17<sup>th</sup> District, City of Atlanta, Fulton County, Georgia, and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING commence at the intersection of the easternmost right-of-way line of North Stratford (a 50-foot right-of-way) and the southernmost right-of-way line of Longleaf Drive (a 50-foot right-of-way), proceed thence along the aforesaid southernmost right-of-way line of Longleaf Drive North 85 degrees 52 minutes 54 seconds East a distance of 224.75 feet to a point; proceed thence, departing from the aforesaid southern right-of-way line of Longleaf Drive, South 00 degrees 31 minutes 47 seconds West a distance of 181.54 feet to an iron pin set; proceed thence South 89 degrees 27 minutes 18 seconds East a distance of 219.67 feet to a one inch open top pipe found; thence North 85 degrees 42 minutes 25 seconds East a distance of 38.56 feet to a point and the POINT OF BEGINNING; from said POINT OF BEGINNING North 85 degrees 42 minutes 25 seconds East a distance of 10.00 feet to a point; thence South 04 degrees 17 minutes 35 seconds East a distance of 5.69 feet to a point; thence South 45 degrees 08 minutes 18 seconds East a distance of 58.57 feet to a point; thence North 85 degrees 42 minutes 25 seconds East a distance of 39.99 feet to a point; thence South 04 degrees 08 minutes 36 seconds East a distance of 82.54 feet to a point, thence North 87 degrees 27 minutes 00 seconds East a distance of 178.58 feet to a point; thence South 64 degrees 43 minutes 33 seconds East a distance of 66.77 feet to a point; thence South 31 degrees 33 minutes 41 seconds West a distance of 10.06 feet to a point; thence North 64 degrees 43 minutes 33 seconds West a distance of 63.19 feet to a point; thence South 87 degrees 27 minutes 00 seconds West a distance of 185.82 feet to a point; thence North 04 degrees 08 minutes 36 seconds West a distance of 49.97 feet to a point; thence South 85 degrees 42 minutes 25 seconds West a distance of 53.00 feet to a point; thence North 04 degrees 08 minutes 36 seconds West a distance of 42.27 feet to a point; thence North 85 degrees 42 minutes 25 seconds East a distance of 9.79 feet to a point; thence North 45 degrees 08 minutes 18 seconds West a distance of 53.65 feet to a point; thence North 04 degrees 17 minutes 35 seconds West a distance of 9.41 feet to a point and the POINT OF BEGINNING.

Said tract containing approximately 0.14 acres as shown on that certain Boundary Survey & Easement Exhibit of Estates at Phipps prepared for Park Regency Partners L.P., The Bank of Nova Scotia and Mellon Bank, N.A., Lehman Brothers Holdings, Inc. and Chicago Title Insurance Company by W.L. Jorden & Co., Inc. dated November 12, 1998, last revised March 17, 1999.

EXHIBIT "P"ESTATES DRAINAGE EASEMENT AREAStorm Easement #1

All that tract or parcel of land lying and being in Land Lot 44, 17th District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING commence at the intersection of the easternmost right-of-way line of North Stratford (a 50-foot right-of-way) and the southernmost right-of-way line of Longleaf Drive (a 50-foot right-of-way);

THENCE North 85 degrees 54 minutes 39 seconds East for a distance of 224.75 feet along the aforesaid southernmost right-of-way line of Longleaf Drive to a point;

THENCE South 00 degrees 33 minutes 32 seconds West for a distance of 181.54 feet leaving the right-of-way line of Longleaf Drive to a 1/2" rebar;

THENCE South 00 degrees 32 minutes 38 seconds West for a distance of 559.59 feet to a 1/2" rebar;

THENCE South 89 degrees 27 minutes 39 seconds East for a distance of 62.27 feet to a point;

THENCE South 15 degrees 46 minutes 38 seconds West for a distance of 33.10 feet to a point;

THENCE South 36 degrees 55 minutes 07 seconds East for a distance of 7.42 feet to a point, said point being THE TRUE POINT OF BEGINNING;

THENCE South 36 degrees 55 minutes 07 seconds East for a distance of 10.0 feet to a point;

THENCE South 53 degrees 20 minutes 09 seconds West for a distance of 76.86 feet to a point;

THENCE North 36 degrees 39 minutes 51 seconds West for a distance of 10.00 feet to a point;

THENCE north 53 degrees 20 minutes 09 seconds East for a distance of 76.82 feet to a point, said point being the TRUE POINT OF BEGINNING.

Said property contains 0.0176 acres more or less.

Storm Easement #2

All that tract or parcel of land lying and being in Land Lot 44, 17th District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING commence at the intersection of the easternmost right-of-way line of North Stratford (a 50-foot right-of-way) and the southernmost right-of-way line of Longleaf Drive (a 50-foot right-of-way);

THENCE North 85 degrees 54 minutes 39 seconds East for a distance of 224.75 feet along the aforesaid southernmost right-of-way line of Longleaf Drive to a point;

THENCE South 00 degrees 33 minutes 32 seconds West for a distance of 181.54 feet leaving the right-of-way line of Longleaf Drive to a 1/2" rebar;

THENCE South 00 degrees 32 minutes 38 seconds West for a distance of 559.59 feet to a 1/2" rebar;

THENCE South 89 degrees 27 minutes 39 seconds East for a distance of 128.86 feet to a 1/2" rebar set;

THENCE South 89 degrees 29 minutes 10 seconds East for a distance of 17.11 feet to a point;

THENCE along a curve to the left having a radius of 811.60 feet and an arc length of 7.10 feet, being subtended by a chord of South 89 degrees 44 minutes 22 seconds East for a distance of 7.10 feet to a point;

THENCE along a curve to the left having a radius of 811.60 feet and an arc length of 10.40 feet, being subtended by a chord of North 89 degrees 38 minutes 35 seconds East for a distance of 10.40 feet to a point;

THENCE South 15 degrees 29 minutes 53 seconds West for a distance of 28.97 feet to a point;

THENCE South 86 degrees 04 minutes 28 seconds West for a distance of 0.97 feet to a point; said point being THE TRUE POINT OF BEGINNING;

THENCE South 86 degrees 04 minutes 28 seconds West for a distance of 32.76 feet to a point;

THENCE North 10 degrees 39 minutes 48 seconds West for a distance of 10.07 feet to a point;

THENCE North 86 degrees 04 minutes 28 seconds East for a distance of 27.51 feet to a point;

THENCE along a curve to the left having a radius of 69.32 feet and an arc length of 11.91 feet, being subtended by a chord of South 36 degrees 41 minutes 12 seconds East for a distance of 11.89 feet to a point, said point being THE TRUE POINT OF BEGINNING.

Said property contains 0.0069 acres more or less.

### Storm Easement #3

All that tract or parcel of land lying and being in Land Lot 44, 17th District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING commence at the intersection of the easternmost right-of-way line of North Stratford (a 50-foot right-of-way) and the southernmost right-of-way line of Longleaf Drive (a 50-foot right-of-way);

THENCE North 85 degrees 54 minutes 39 seconds East for a distance of 224.75 feet along the aforesaid southernmost right-of-way line of Longleaf Drive to a point;

THENCE South 00 degrees 33 minutes 32 seconds West for a distance of 181.54 feet leaving the right-of-way line of Longleaf Drive to a 1/2" rebar;

THENCE South 00 degrees 32 minutes 38 seconds West for a distance of 559.59 feet to a 1/2" rebar;

THENCE South 89 degrees 27 minutes 39 seconds East for a distance of 128.86 feet to a 1/2" rebar set;

THENCE South 89 degrees 29 minutes 10 seconds East for a distance of 17.11 feet to a point;

THENCE along a curve to the left having a radius of 811.60 feet and an arc length of 7.10 feet, being subtended by a chord of South 89 degrees 44 minutes 22 seconds East for a distance of 7.10 feet to a point, said point being the TRUE POINT OF BEGINNING;

THENCE along a curve to the left having a radius of 811.60 feet and an arc length of 10.40 feet, being subtended by a chord of North 89 degrees 38 minutes 35 seconds East for a distance of 10.40 feet to a point;

THENCE South 15 degrees 29 minutes 53 seconds West for a distance of 28.97 feet to a point;

THENCE South 86 degrees 04 minutes 28 seconds West for a distance of 0.97 feet to a point;

THENCE along a curve to the right having a radius of 69.32 feet and an arc length of 11.91 feet, being subtended by a chord of North 36 degrees 41 minutes 12 seconds West for a distance of 11.89 feet to a point;

THENCE North 86 degrees 04 minutes 28 seconds East for a distance of 0.33 feet to a point;

THENCE North 15 degrees 29 minutes 53 seconds East for a distance of 19.05 feet to a point, said point being THE TRUE POINT OF BEGINNING.

Said property contains 0.0057 acres more or less.

#### Pond Easement

All that tract or parcel of land lying and being in Land Lot 44, 17th District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING commence at the intersection of the easternmost right-of-way line of North Stratford (a 50-foot right-of-way) and the southernmost right-of-way line of Longleaf Drive (a 50-foot right-of-way);

THENCE North 85 degrees 54 minutes 39 seconds East for a distance of 224.75 feet along the aforesaid southernmost right-of-way line of Longleaf Drive to a point;

THENCE South 00 degrees 33 minutes 32 seconds West for a distance of 181.54 feet leaving the right-of-way line of Longleaf Drive to a 1/2" rebar;

THENCE South 00 degrees 32 minutes 38 seconds West for a distance of 559.59 feet to a 1/2" rebar;

THENCE South 89 degrees 27 minutes 39 seconds East for a distance of 62.27 feet to a point, said point being THE TRUE POINT OF BEGINNING;

THENCE South 89 degrees 27 minutes 39 seconds East for a distance of 54.06 feet to a point;

THENCE South 10 degrees 39 minutes 48 seconds East for a distance of 54.42 feet to a point;

THENCE South 84 degrees 35 minutes 09 seconds West for a distance of 52.98 feet to a point;

THENCE North 36 degrees 55 minutes 07 seconds West for a distance of 33.94 feet to a point;

THENCE North 15 degrees 46 minutes 38 seconds East for a distance of 33.10 feet to a point, said point being THE TRUE POINT OF BEGINNING.

Said property contains 0.0797 acres more or less.

EXHIBIT "Q"WATER LINE EASEMENT AREA

ALL THAT TRACT or parcel of land lying in or being in Land Lot 44 of the 17<sup>th</sup> District, City of Atlanta, Fulton County, Georgia, and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING commence at the intersection of the easternmost right-of-way line of North Stratford (a 50-foot right-of-way) and the southernmost right-of-way line of Longleaf Drive (a 50-foot right-of-way), proceed thence along the aforesaid southernmost right-of-way line of Longleaf Drive North 85 degrees 52 minutes 54 seconds East a distance of 224.75 feet to a point; proceed thence, departing from the aforesaid southern right-of-way line of Longleaf Drive, South 00 degrees 31 minutes 47 seconds West a distance of 181.54 feet to an iron pin set; proceed thence South 89 degrees 27 minutes 18 seconds East a distance of 219.67 feet to a one inch open top pipe found; thence North 85 degrees 42 minutes 25 seconds East a distance of 310.03 feet to a 3/4" open top pipe found; thence South 58 degrees 27 minutes 03 seconds East a distance of 143.22 feet to an iron pin set; thence South 58 degrees 27 minutes 03 seconds East a distance of 279.47 feet to a point; thence South 58 degrees 32 minutes 02 seconds East a distance of 54.25 feet to a point on the western right-of-way line of Phipps Boulevard (formerly Wieuca Connector); thence along said western right-of-way line along the arc of a curve to the left (said curve having a radius of 563.37 feet and a chord length of 89.20 feet on a bearing of South 32 degrees 19 minutes 56 seconds West) an arc distance of 89.29 feet to a point; thence along said western right-of-way line South 29 degrees 41 minutes 30 seconds West a distance of 152.24 feet to a point; thence continuing along said right-of-way line South 25 degrees 21 minutes 22 seconds West a distance of .06 feet to a point; thence continuing along said right-of-way line South 25 degrees 21 minutes 22 seconds West a distance of 45.97 feet to a point and THE POINT OF BEGINNING; from said POINT OF BEGINNING, continuing along said right-of-way line South 25 degrees 21 minutes 22 seconds West a distance of 4.00 feet to a point; thence leaving said right-of-way line North 64 degrees 38 minutes 38 seconds West a distance of 32.20 feet to a point; thence North 25 degrees 21 minutes 22 seconds East a distance of 10.83 feet to a point on the northern right-of-way line of the proposed roadway; thence along said northern line of proposed roadway along the arc of a curve to the left (said curve having a radius of 40.00 feet and a chord length of 10.57 feet on a bearing of South 83 degrees 30 minutes 36 seconds East) an arc distance of 10.60 feet to a point; thence leaving said proposed roadway South 25 degrees 21 minutes 22 seconds West a distance of 10.25 feet to a point; thence South 64 degrees 38 minutes 38 seconds East a distance of 22.20 feet to a point on the western right-of-way line of Phipps Boulevard and the POINT OF BEGINNING.

Said tract containing approximately 0.005 acres as shown on that certain Boundary Survey & Easement Exhibit of Estates at Phipps prepared for Park Regency Partners L.P., The Bank of Nova Scotia and Mellon Bank, N.A., Lehman Brothers Holdings, Inc. and Chicago Title Insurance Company by W.L. Jorden & Co., Inc. dated November 12, 1998, last revised March 17, 1999.

EXHIBIT "R"

LANDSCAPE EASEMENT AREA

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lot 44, 17th District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING commence at the point of intersection of the eastern right-of-way line of North Stratford (50 foot R/W) and the southern right-of-way line of Longleaf Drive (50 foot R/W), thence along said southern right-of-way line of Longleaf Drive North 85° 52' 54" East a distance of 224.75 feet to a point; thence leaving said southern right-of-way line South 00° 31' 47" West a distance of 181.54 feet to an iron pin set; thence South 89° 27' 18" East a distance of 219.67 feet to a 1" open top pipe found; thence North 85° 42' 25" East a distance of 310.03 feet to a 3/4" open top pipe found; thence South 58° 27' 03" East a distance of 143.22 feet to an iron pipe set; thence South 31° 33' 41" West a distance of 94.78 feet to a point and the POINT OF BEGINNING; thence South 58° 26' 19" East a distance of 10.00 feet to a point; thence South 31° 33' 41" West a distance of 232.31 feet to a point; thence North 58° 26' 19" West a distance of 10.00 feet to a point; thence North 31° 33' 41" East a distance of 232.31 feet to a point and the POINT OF BEGINNING.

Said tract containing approximately 0.03 acres as shown on that certain Boundary Survey & Easement Exhibit of Estates at Phipps prepared for Park Regency Partners L.P., The Bank of Nova Scotia and Mellon Bank, N.A., Lehman Brothers Holdings, Inc. and Chicago Title Insurance Company by W.L. Jorden & Co., Inc. dated November 12, 1998, last revised March 17, 1999.

EXHIBIT "S"

INSURANCE SCHEDULE

**I. INSURANCE POLICY REQUIREMENTS**

- A. Liability Insurance. The term "Liability Insurance" means Insurance Services Office ("ISO") commercial general liability insurance (most recent edition of ISO form or equivalent), unless otherwise agreed upon by all Owners, having a combined single limit of not less than Ten Million Dollars (\$10,000,000) per occurrence, with a deductible of not more than Five Hundred Thousand Dollars (\$500,000), providing coverage for bodily injury, property damage, personal injury, product liability, and completed operations; provided, however, that at such time as the Single-Family Tract is subdivided (other than in connection with a condominium), "Liability Insurance" as to each owner of fee simple title to any parcel comprising the Single-Family Tract shall mean ISO commercial general liability insurance (most recent edition of ISO form or equivalent) having a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence, with a deductible of not more than Twenty-Five Thousand Dollars (\$25,000), providing coverage for bodily injury, property damage, personal injury, product liability, and completed operations. Such limit may be reached by a combination of a primary liability policy of at least One Million Dollars (\$1,000,000) and excess and/or umbrella liability insurance; shall drop down as layers below are exhausted, provided, however, that such drop down or following form coverage shall otherwise comply with all other provisions contained in this Exhibit. Such liability policy shall include a deletion of the exclusion for explosion, collapse or underground hazard, if applicable, and contain a blanket written contractual liability clause and shall cover contractual liability of the insured Person under written agreements.

**II. GENERAL PROVISIONS**

- A. Insurance Companies. The insurance described above shall be written by companies having a "General Policyholders Rating" of at least A-VIII (or such higher rating as may be required by a Mortgagee) from A.M. Best Company or an equivalent rating from another industry-accepted rating agency, unless otherwise agreed by all the Owners.
- B. Additional Insureds. All insurance policies required by this Exhibit shall name as additional insureds ("Additional Insureds") all Owners, all Mortgagees and such other persons as an Owner reasonably requests be named as an additional insured solely with respect to the operations of the first-named insured at the applicable Tract.



- C. Policies of Insurance. Each Owner shall provide the other Owners with original certificates as evidence of insurance required by Section I, Paragraph A of this Exhibit.

EXHIBIT "T"

PROHIBITED USES

1. Any so-called "adult" or "XXX" business including without limitation any store featuring or specializing in pornography, sexual books or sexual literature, sex toys, sexual paraphernalia or sexual-oriented clothing, excluding sales of mass market magazines, books and other products commonly sold in general interest book stores, grocery stores, convenience stores and drug stores, and which are incidental to other permitted retail sales.
2. Any so-called "head shop" or similar business including without limitation any store featuring or specializing in illegal or recreational drugs, books or literature oriented towards illegal or recreational drugs or the use of such drugs, paraphernalia or clothing associated with illegal or recreational drugs, excluding sales of mass market magazines, books and other products commonly sold in general interest book stores, grocery stores, convenience stores and drug stores, and which are incidental to other permitted retail sales.
3. Any religious, charitable, missionary or social service organizations.
4. Any political, fund raising or advocacy groups.
5. Any business or use oriented toward, specializing in, promoting or selling (1) firearms or other weapons, (2) any military cause or militia or paramilitary or similar organization or activity, (3) any so-called "cult," whether or not religious in nature, excluding sales of mass market magazines, books and other products commonly sold in general interest book stores, grocery stores, convenience stores and drug stores, and which are incidental to other permitted retail sales.
6. Any business offering packaged liquor;
7. Any "second hand" store, resale shop or "surplus" store.
8. Any fire or bankruptcy sale or auction house operation.
9. Any car, truck, equipment or other consumer rental facility.
10. Any hospital.
11. Any massage parlor, tanning salon, modeling studio or similar establishment; provided, however, (i) a health and beauty spa located on any Tract for the exclusive use of the residents of such Tract shall be permitted and (ii) an open-to-the-public upscale health and beauty spa (including massages and massage therapy) such as Aveda Spa or an upscale tanning salon, in either case as expressly approved in writing by the Association, shall be permitted.
12. Any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to (i) laundry and dry cleaning facilities which are solely

for pickup and delivery and are found in comparable real estate developments in the Atlanta, Georgia metropolitan area and (ii) a central laundry established on any Tract for the exclusive use of the residents of such Tract.

13. Any gas station, service station or motor vehicle repair facility of any kind.
14. Any automobile dealership or showroom of any kind.
15. Any junkyard, salvage or recycling operation.
16. Any manufacturing facility of any kind;
17. Any bar, nightclub or other drinking establishment (but restaurants which do not primarily focus on the sale of alcoholic beverages, and bars which are ancillary to a Permitted Use on the Land, shall not be prohibited by reason of this Item 17).
18. Any use which constitutes a public or private nuisance or which emits or generates an obnoxious odor, noise, litter, dust or dirt which can be heard or smelled outside of any Improvements located on any Tract.
19. Any use which produces or is accompanied by any unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks, other than de minimis amounts of fireworks for sale to consumers to the extent permitted by Legal Requirements).
20. Any operation primarily used as a storage warehouse operation and any assembling, manufacturing, refining, smelting, industrial, agricultural, drilling or mining operation.
21. Any automobile body shop or repair operation, including automobile servicing or repair work (e.g., oil change, tire change, body or paint shop, tune-up, brake or muffler service).
22. Any veterinarian, veterinary hospital or animal raising facilities (except that this prohibition shall not prohibit pet shops).
23. Any mortuary or funeral home.



GEORGIA, FULTON COUNTY  
FILED AND RECORDED

## CROSS REFERENCE

1999 APR -2 AM 8:57

### AMENDED AND RESTATED

### COMMON AREA MAINTENANCE AGREEMENT

JUANITA HICKS  
CLERK, SUPERIOR COURT

AFTER RECORDING RETURN TO:  
GEORGE C. CALLOWAY, ESQ.  
SPECIALIZED TITLE SERVICES, INC.  
BUILDING 2, SUITE 300  
1000 N. CHERRY TREE DR, WOODY ROAD, N.E.  
ATLANTA, GEORGIA 30328  
STS FILE # 1042 41

THIS AMENDED AND RESTATED COMMON AREA MAINTENANCE AGREEMENT (the "Agreement") is made the 31<sup>st</sup> day of March, 1999, by and among TAP ASSOCIATES, L.P., a Georgia limited partnership ("TAP"), ESTATES AT PHIPPS LIMITED PARTNERSHIP, a South Carolina limited partnership ("Estates") and PARK REGENCY PARTNERS L.P., a Delaware limited partnership ("Park Regency").

### WITNESSETH:

WHEREAS, TAP and Estates entered into a certain Common Area Maintenance Agreement dated June 14, 1994, and filed for record on June 16, 1994 at Deed Book 18383, Page 244, Fulton County, Georgia Records (the "Original Agreement"), providing for the maintenance of certain common areas located upon portions of their respective properties and the sharing of common area maintenance expenses related thereto;

WHEREAS, Estates is the owner of a tract of land in the City of Atlanta, Fulton County, Georgia more particularly described in Exhibit "A" attached hereto and by this reference made part hereof (the "Estates Property");

WHEREAS, TAP is the owner of certain tracts of land in the City of Atlanta, Fulton County, Georgia more particularly described in Exhibit "B" attached hereto and by this reference made a part hereof (the "Remaining TAP Property");

WHEREAS, Park Regency is the owner of a tract of land in the City of Atlanta, Fulton County, Georgia more particularly described in Exhibit "C" attached hereto and by this reference made part hereof (the "Park Regency Property");

WHEREAS, in connection with the conveyance of the Estates Property from TAP to Estates, TAP executed and delivered to Estates that certain Limited Warranty Deed with Covenants and Easements dated June 14, 1994, and recorded at Deed Book 18383, Page 182, Fulton County, Georgia Records (the "Estates Deed");

WHEREAS, pursuant to the Estates Deed, TAP and Estates did, among other things, create and establish certain easements for the benefit of the TAP Property (as defined in the Original Agreement) and the Estates Property;

WHEREAS, the Park Regency Property was recently sold by TAP to Park Regency, and the Park Regency Property was previously subject to the Original Agreement; and

WHEREAS, following the transfer of the Park Regency Property the parties hereto desire to amend and restate the Original Agreement and to agree to certain covenants and conditions with

respect to the maintenance of certain Common Areas (as defined below) benefitting the Remaining TAP Property, the Estates Property and the Park Regency Property.

NOW, THEREFORE, for and in consideration of the foregoing premises and other good and valuable consideration, including payment of Ten and No/100 Dollars (\$10.00) by each party hereto to the other, the receipt and sufficiency of which are hereby acknowledged, TAP, Estates and Park Regency hereby declare that the Estates Property, the Remaining TAP Property and the Park Regency Property shall be held, sold and conveyed subject to the following covenants and conditions, which are for the purpose of protecting the value and the desirability of the Remaining TAP Property, the Estates Property and the Park Regency Property, and which shall, subject to the terms and provisions hereof, run with the Estates Property, the Remaining TAP Property and the Park Regency Property and bind the subsequent owners thereof.

1. Designation of Common Areas. For purposes hereof, "Common Areas" shall mean the areas hereby designated by TAP as being for the common benefit of owners of the Estates Property, the Park Regency Property and the Remaining TAP Property, as follows:

(i) The "Internal Road" (as defined in the Estates Deed), which shall include (without limitation) all paving, sidewalks, curbs, gutters, retention and detention ponds and facilities and other drainage improvements contained in or associated with the Internal Road, all slopes associated with the Internal Road (including, without limitation, the "Road Slopes", as defined in the Estates Deed), all grassing, landscaping and landscape irrigation systems within and along the boundaries of the Internal Road and all street lights, traffic lights, directional signs and other traffic control systems and facilities necessary or desirable for the use and operation of the Internal Road;

(ii) The "Water Line Facilities" (as defined in the Estates Deed);

(iii) The "Monument Sign" (as defined in the Estates Deed) and all other signage erected in connection with any comprehensive signage program implemented by TAP as described in the Estates Deed; and

(iv) All grassing, landscaping and landscape irrigation systems within and along both boundaries of the right-of-way of Phipps Boulevard (the "Phipps Boulevard Landscape Improvements").

2. Common Area Maintenance and Expenses. (a) Estates shall pay to TAP thirty-eight and three tenths percent (38.3%) ("Estates' Percentage") and Park Regency shall pay to TAP ten percent (10%) (the "Park Regency Percentage") of all reasonable, out-of-pocket costs and expenses for the maintenance, repair and replacement, utilities, taxes and assessments, and insurance for or with respect to the Common Areas, to the extent fairly allocated to the Common Areas at issue (all of such costs and expenses being, collectively, "Common Area Maintenance Expenses") which are actually incurred and paid to unrelated third-parties or, if paid to related parties, which do not exceed

a competitive market price therefor. TAP, or its designee (including any Designated Owner, as hereinafter defined) shall invoice Estates and Park Regency periodically as determined by TAP (but no more frequently than monthly and no less often than annually) for their respective share of actual Common Area Maintenance Expenses previously paid by TAP or invoiced by TAP with payment due. Upon written request by Estates or Park Regency, TAP (or such designee) shall promptly deliver to such requesting party copies of appropriate documents, invoices, receipts and other information substantiating the incurring and payment of such Common Area Maintenance Expenses which are the subject of any such invoice. From time to time Estates or Park Regency, upon reasonable prior notice and during normal business hours, may inspect, audit and copy pertinent books and records of TAP (or such designee) regarding Common Area Maintenance Expenses. In addition to the remedies set forth in Paragraph 4 hereof, TAP shall have a mechanic's lien against the Estates Property and/or the Park Regency Property for any Common Area Maintenance Expenses due from but unpaid by Estates or Park Regency, respectively, within thirty (30) days after invoice therefor, subject to the provisions of Paragraph 7 below. Except for the Estates Percentage and the Park Regency Percentage, but subject to the other terms hereof, TAP shall pay or cause others to pay all Common Area Maintenance Expenses. The failure of Estates or Park Regency (or any other party with whom TAP may enter into similar agreements) to make their respective payments when due shall not reduce TAP's obligation to perform hereunder nor increase the Estates' Percentage, the Park Regency Percentage or the respective costs of Estates or Park Regency hereunder.

(b) Notwithstanding anything contained to the contrary, for purposes of this Agreement, Common Area Maintenance Expenses shall not, without the consent of Estates and Park Regency, include the costs of original acquisition, construction or installation of any Common Areas, except that Common Area Maintenance Expenses may include (i) costs of acquisition and installation from time to time of seasonal plantings in any of the landscaped areas included in the Common Areas; and (ii) acquisition, construction and installation of the Monument Sign and any other signage erected in connection with any comprehensive signage program implemented by TAP as described in the Estates Deed; provided, however, that neither the Estates' Percentage or the Park Regency Percentage shall include any costs and expenses (whether costs or original installation or otherwise) associated with the Monument Sign or signage erected in connection with any comprehensive signage program unless the party not otherwise obligated to contribute towards the cost of the Monument Sign shall elect to place signage on the Monument Sign or otherwise participate in the comprehensive signage program implemented by TAP. Further, Common Area Maintenance Expenses shall not include the cost of enlarging or extending the Internal Road, or expanding the capacity of the Water Line Facilities or the cost of repair or replacement of the Internal Road or Water Line Facilities attributable to an expanded use.

(c) If the aggregate density of the Estates Property, the Park Regency Property and the Remaining TAP Property at any time exceeds one thousand (1,000) residential units, then the portions of Common Area Maintenance Expenses payable by Estates, Park Regency and TAP as set forth in subparagraph (a), above, shall be recalculated upon the basis on the relationship of the respective density of the Estates Property, the Park Regency Property and the Remaining TAP Property to the aggregate density of the Estates Property, the Park Regency Property and the Remaining TAP Property.

3. Maintenance Responsibility. (a) TAP shall, damage by casualty or condemnation excepted, maintain the Common Areas (i) in a condition at least comparable to the level of maintenance with respect to comparable real estate developments in the Atlanta, Georgia metropolitan area.

(b) TAP shall have the right at any time hereafter in connection with the bona fide sale of any portion of the Remaining TAP Property to a purchaser (with such purchaser and its successors in ownership with respect to such portion of the Remaining TAP Property being the "Designated Owner" and such portion of the Remaining TAP Property being called the "Designated Lot"), to delegate to and assign to the Designated Owner all of the rights, obligations and duties of TAP under this Agreement and, from and after such time (and provided the Designated Owner assumes in writing the obligations of TAP hereunder and notice of such assignment and assumption, together with a copy of the instrument of assumption, is delivered to Estates, Park Regency, and to any holder of a deed to secure debt or similar instrument now or hereafter encumbering the Estates Property or the Park Regency Property, provided that TAP has been given notice in accordance with Paragraph 8 of this Agreement of the name and address of such holder), the Designated Owner shall have all such rights and Designated Owner and the Designated Lot shall be solely responsible for all of the obligations, duties and claims of TAP or the Remaining TAP Property hereunder arising from and after the date of such assignment and assumption and, as regards Estates and Park Regency, the balance of the Remaining TAP Property and the owner or owners thereof shall thereafter be released and relieved of any obligation, duty, liability, responsibility, claim or demand (including, without limitation, reimbursement or lien claims) by Estates and Park Regency hereunder (provided such releasing party has received notice and a copy of the assumption instrument as provided above), except for reimbursement or lien claims arising hereunder prior to the date of such assignment and assumption. Conversely, so long as a portion of the Remaining TAP Property shall remain which has not yet been released from the provisions hereof and which ultimately shall become or be designated the Designated Lot (such that the owners thereof shall become the Designated Owner), TAP shall be entitled, in connection with the sale from time to time of other portions of the Remaining TAP Property, to declare to Estates and Park Regency that such other portions of the Remaining TAP Property are and shall be thereafter, except for reimbursement or lien claims hereunder arising prior to the date of such sale, released and relieved of any obligation, duty, liability, responsibility, claim or demand hereunder (including, without limitation, reimbursement or lien claims) and, from and after such time, the balance of the Remaining TAP Property not previously declared released and relieved of obligation duty, liability, responsibility, claim or demand hereunder shall be the "Remaining TAP Property" for purposes hereof. In furtherance of the foregoing, Estates and Park Regency shall at any time, and from time to time, execute and deliver, in recordable form, such documents or instruments as may be reasonably requested by the owner of any portion of the Remaining TAP Property so released and relieved (whether by designation of a Designated Lot or declaration of release) of and from obligations, duties, liabilities, responsibilities, claims or demands hereunder in order to confirm ratify and evidence of record such release and relief, provided that neither Estates nor Park Regency shall have any such obligation in the context of designation of the Designated Lot unless Estates and Park Regency have been or are simultaneously provided the written assumption contemplated above. Nothing herein contained release or relieve any future owner or owners of portions of the Remaining TAP Property from any



obligations or responsibilities for cost-sharing which may be owed by any such owner or owners, or their respective properties to TAP or Designated Owner (as opposed to Estates or Park Regency) by virtue of documentation similar to this Agreement executed in connection with, or at any time after, a sale of such portion or portions of the Remaining TAP Property to such owner or owners by TAP.

(c) Notwithstanding any provision of this Agreement to the contrary, the Designated Lot shall at no time contain fewer than five (5) acres of land.

(d) TAP and Estates hereby acknowledge and agree that notwithstanding anything to the contrary contained in the Original Agreement (i) this Agreement shall not constitute or be deemed to be an assignment or assumption between TAP and Park Regency of the Original Agreement, (ii) Park Regency shall not be deemed to be a Designated Owner as defined in the Original Agreement, (iii) the Park Regency Property shall not be deemed to be a Designated Lot as defined in the Original Agreement. Further, TAP hereby declares to Estates (as provided in the Original Agreement) that the Park Regency Property is and shall be hereafter be released and relieved of any obligation, duty, liability, responsibility, claim or demand under the Original Agreement (including without limitation, reimbursement or lien claims thereunder).

4. Remedies. (a) In the event of a violation by Estates or Park Regency of any of the agreements made by such party under this Agreement, then TAP shall have the right, in addition to the lien rights above provided, but always subject to the provisions of Paragraph 6 below, to sue Estates or Park Regency, as the case may be, to recover the amounts owed by such party hereunder plus costs of collection (including, without limitation, court costs and reasonable attorneys' fees); provided, however, that TAP shall give Estates or Park Regency, as the case may be, sixty (60) days notice of a claimed violation, and an opportunity to cure such claimed violation, prior to instituting a suit for damages.

(b) In the event TAP or, after delegation and assignment of the obligations of TAP hereunder to Designated Owner, Designated Owner shall fail to perform the maintenance required of it pursuant to Paragraph 3 above, Estates or Park Regency shall give notice of such failure to TAP or Designated Owner, as the case may be, and if such failure continues for a period in excess of sixty (60) days following such notice (provided that no such notice shall be necessary in cases of emergency where failure immediately to perform such maintenance would threaten imminent harm to person or property), then Estates and Park Regency shall have the right, but not the obligation, to perform such maintenance and, in such event, such performing party shall be entitled to reimbursement by TAP or, after delegation and assignment, Designated Owner for the percentage for which such performing party is not otherwise obligated hereunder (61.7% in the case of Estates and 90% in the case of Park Regency) of all reasonable, out-of-pocket Common Area Maintenance Expenses actually incurred and paid to unrelated third parties or, if paid to related parties, not to exceed a competitive market price therefor and which otherwise are generally consistent with the level of expenses historically incurred by TAP (or Designated Owner, as the case may be) in performance of such work with due regard to inflation. Additionally, such performing party shall also be entitled to reimbursement from any other party now or hereafter obligated for the payment of Common Area Maintenance Expenses up to the percentage of such party's obligation.

Notwithstanding the foregoing, neither Estates nor Park Regency shall (except in cases of emergency) be entitled to "self-help" in accordance with the preceding sentence if the failure by TAP or Designated Owner to maintain cannot reasonably be cured within such sixty (60) day period, but such party commences a cure within such period and thereafter diligently and continuously prosecutes same to completion. Upon written request by TAP or the Designated Owner, or by any other non-performing party obligated for reimbursement, Estates or Park Regency, as the case may be, shall promptly deliver to such requesting party copies of appropriate documents, invoices, receipts and other information substantiating the incurring and payment of such costs which are the subject of any such request for reimbursement and, upon reasonable prior notice to such performing party and during normal business hours, such requesting party may inspect, audit and copy pertinent books and records of the performing party pertaining to reimbursement requests made under this Paragraph 4(b). Estates and Park Regency shall, subject to Paragraph 6 below, have the right to sue TAP (or Designated Owner after delegation and assignment pursuant to Paragraph 3 above) to collect any reimbursements owned hereunder plus costs of collection (including, without limitation, court costs and reasonable attorneys' fees), to the extent such reimbursements are not paid within sixty (60) days following invoice therefor. In addition Estates and Park Regency shall, subject to the provisions of Paragraph 7 below, have a mechanic's lien against the Remaining TAP Property for any such reimbursements due from, but unpaid by, TAP within thirty (30) days following invoice therefor; provided, however, that from and after the date of delegation and assignment to Designated Owner as contemplated by Paragraph 3 above, such reimbursements shall be due from Designated Owner and such mechanic's lien shall thereafter arise against and encumber solely the Designated Lot owned by such Designated Owner and not the balance of the Remaining TAP Property or, conversely, from and after declaration of release of a portion of the Remaining TAP Property as contemplated by paragraph 3 above, such reimbursements shall be due from TAP (being, for these purposes, the owner of the balance of the Remaining TAP Property not previously so released) and such mechanic's lien shall thereafter arise against and encumber solely the balance of the Remaining TAP Property not so previously released. The foregoing rights and remedies shall be the sole rights and remedies available to Estates and Park Regency, whether at law or in equity, as a result of any breach of the maintenance obligations set forth in Paragraph 3 hereof and neither Estates nor Park Regency shall have the right to seek specific performance regarding such obligations. It is expressly understood and agreed that the "self-help" remedy afforded Estates and Park Regency in accordance with the provisions of this Paragraph 4(b) shall apply with respect to, and to the extent of, Common Areas designated in Paragraph 1 above. Further, nothing provided in this Paragraph 4(b) entitling Estates or Park Regency to "self-help" shall permit or entitle Estates or Park Regency to perform maintenance with respect to the Common Areas, and incur Common Area Maintenance Expenses subject to reimbursement, at a level exceeding the level or standard of maintenance with respect to such Common Areas provided by Paragraph 3 above.

5. Covenants Run with the Land. The covenants and agreements made herein shall be and be deemed to be covenants running with the Estates Property, the Park Regency Property and the Remaining TAP Property, shall be and be deemed to be binding upon TAP, Estates and Park Regency, and their transferees, successors and assigns, and benefitting TAP, Estates and Park Regency, their transferees, successors and assigns, but always subject to the terms and provisions hereof. In addition to, but not in derogation of, the provisions of Paragraph 3, in the event of any

transfer of title to any portion of the Remaining TAP Property, the Estates Property or the Park Regency Property, the transferor, as to the portion of such property transferred, shall cease to be liable and shall automatically be released from any and all liability for the performance or observance of any agreements or conditions on its part to be performed or observed hereunder from and after the time of such transfer, it being understood and agreed that the obligations and liabilities set forth herein are not personal to the parties hereto, but run with the land, subject to the following sentence with regard to liability for prior defaults and provided that nothing herein shall, but always subject to Paragraph 6 below, release or relieve any transferor from any liability hereunder arising prior to the sale or transfer. From and after each transfer, the transferee shall, subject to Paragraph 3, be liable for the performance and observance of this Agreement (as to liabilities and obligations arising or to be performed from and after the transfer only but including continuing defaults of non-performance) as to the Estates Property, the Park Regency Property or the portion of the Remaining TAP Property conveyed to the transferee; provided that such transferee shall also (but subject to the provisions of Paragraphs 6 and 7 below) be jointly and severally liable with the transferor for payment or reimbursement of any sums due and owing hereunder (but unpaid) prior to the date of the transfer (and the property so transferred shall likewise be transferred subject to any liens or claims of lien hereunder respecting the amount so owned at such time). Upon each transfer, the transferor shall thereby be divested of its rights and obligations thereafter accruing as to the Estates Property, the Park Regency Property or the portion of the Remaining TAP Property transferred and the transferee shall, subject to Paragraph 3, succeed to the same; provided, however, transfers under a deed to secure debt, mortgage or other encumbrance, shall not divest the transferor until such time as such deed to secure debt, mortgage or other encumbrance is foreclosed. Any conveyance of any portion of the property which is the subject of this Agreement shall, subject to the provisions of Paragraph 3, also convey, as applicable, the rights, privileges, duties and obligations contained in this Agreement which are appurtenant to or bind or are the obligation of such portion of the property, regardless of whether specific mention is made of this Agreement and regardless of whether a specific conveyance is made of, or subject to, the rights privileges, duties and obligations, as applicable herein contained. Further, the purpose of this Agreement is the establishment of cost-sharing covenants with regard to the Common Areas, and none of the terms or provisions of this Agreement shall be or deemed to be "covenants restricting land to certain uses" for purposes of O.C.G.A. §44-5-60, or any similar law or statute, and TAP, Estates and Park Regency (knowingly, willingly and upon the advice of legal counsel) each expressly forever waives, releases and discharges any right and such party now has or may have to claim or assert in any legal or other circumstances that any of the terms or provisions of this Agreement are in any way covered or limited by said Section or any similar law or statute.

6. Limitation of Liability. Notwithstanding any provision of this Agreement to the contrary, it is understood that, in the event any action at law or brought against any party to recover sums owed hereunder, judgment may be recovered only from and only to the extent of, the interest of such party in the Remaining TAP Property (or, from and after delegation and assignment as contemplated by Paragraph 3, the Designated Lot of the Designated Owner), the Estates Property or the Park Regency Property, as the case may be (together with equity proceeds of sale thereof), it being understood that neither TAP, Designated Owner, Estates, Park Regency or any other party, nor any partner or joint venturer of any of the same, nor any officer, director or shareholder of any of the

foregoing, shall have any personal liability by virtue of this Agreement with respect to the covenants and obligations set forth herein.

7. Lien Rights. (a) To the extent that this Agreement provides for any party to have a mechanic's lien on a parcel of property, it is expressly understood and agreed that any such lien shall be subordinate and inferior to (i) the lien and security title of any institutional first mortgage or security deed now or hereafter placed upon the parcel subject to such mechanic's lien, (except for such liens as may arise hereunder and be claimed for amounts owed prior to the date of recordation of such first mortgage or security deed) and (ii) any declaration of condominium hereafter filed pursuant to O.C.G.A. §44-3-70, et seq.

(b) Except for liens for amounts owed prior to recordation of such institutional first mortgage or security deed, foreclosure or deed in lieu of foreclosure with respect to such institutional first mortgage or security deed shall relieve the parcel at issue from any liens previously imposed hereunder due to nonpayment (and liability with respect to the unpaid sums giving rise to the foreclosed lien), but shall not relieve such parcel from liability for any payments to be made hereunder after such foreclosure or deed in lieu thereof, nor from any subsequent lien arising out of nonpayments of any such sums, nor from any liens for amounts owed prior to recordation of such institutional first mortgage or security deed or liability for payments to be made hereunder with respect to any such preexistent claimed lien.

(c) After the filing of a declaration of condominium with respect to any portion of the Park Regency Property, any mechanic's lien arising hereunder (whenever arising or filed) with respect to the property which is subject to such declaration shall be deemed to be for labor or services performed or materials furnished for improvements of common elements of the condominium subsequent to the creation of the condominium. Any unit owner of a condominium created pursuant to such declaration may remove such lien from his condominium unit by the payment of the amount attributable to his condominium unit. The amount which is attributable to his unit shall be computed by reference to the liability of such unit for common element expenses under the declaration.

8. Notices. Any notice or other communication required or permitted to be given under this Agreement (a "Notice") shall be in writing and shall be delivered by hand or overnight air courier or mailed by United States registered or certified mail, return receipt requested, postage prepaid and addressed to each party at its address as set forth below. Each Notice shall be effective on the date of hand or overnight air courier delivery or on the date of deposit in the United States mail as provided above; however, the time period within which a response to any Notice must be given if any, shall commence to run from the date of actual receipt of such Notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice was given shall be deemed to be receipt of the Notice sent. By giving to the other parties at least thirty (30) days' Notice thereof, any party (including any party which acquires any portion of the Remaining TAP Property) shall have the right from time to time during the term of this Agreement to change the address thereof and to specify as the address thereof any other address within the United States of America.

Each Notice to TAP shall be addressed as follows:

TAP Associates, L.P.  
c/o Pope & Land Enterprises, Inc.  
3225 Cumberland Boulevard, Suite 400  
Cumberland Center IV  
Atlanta, Georgia 30339-5939  
Attention: Mr. Lawrence P. Kelly

and with a copy to:

Kilpatrick Stockton, LLP  
1100 Peachtree Street, Suite 2800  
Atlanta, Georgia 30309  
Attention: Tim Carssow, Esq.

Each Notice to Estates shall be addressed as follows:

1401 Main Street  
Suite 650  
Columbia, South Carolina 29201  
Attention: Robert M. Mundy, Jr.

with a copy to:

Nexsen Pruet Jacobs & Pollard, LLP  
1441 Main Street, 15<sup>th</sup> Floor  
Columbia, South Carolina 29202  
Attention: W. Leighton Lord III, Esq.

Each Notice to Park Regency shall be addressed as follows:

Park Regency Partners L.P.  
c/o The Brickstone Companies  
The Plaza at Continental Park  
2101 Rosecrans Ave., Suite 5252  
El Segundo, CA 90245  
Attn: Mr. John Kusmiersky

with a copy to:

Long Aldridge & Norman LLP  
303 Peachtree Street, Suite 5300  
Atlanta, Georgia 30308  
Attention: Robert E. Tritt, Esq.

Any person or entity becoming an owner of all or any portion of the Remaining TAP Property also shall be entitled to receive copies of notices to TAP required or permitted hereunder from and after the time such owner gives notice in accordance with the provisions hereof of its ownership of a portion of the Remaining TAP Property. In addition, a copy of any notice or communication set pursuant to this Agreement to TAP, Estates or Park Regency (or another owner of all or any portion of the Remaining TAP Property entitled to notices as herein provided) shall also be sent, in the same manner, to any other holder of any deed to secure debt or similar instrument encumbering the property of the recipient, if the name and address of such holder has been provided in writing to the sender of the notice or communication.

9. Mortgagee Cure. Notwithstanding any contrary provision of this Agreement, any holder of a deed to secure debt or similar instrument now or hereafter encumbering any portion of the Remaining TAP Property, the Estates Property or the Park Regency Property shall be privileged, but not obligated, to cure any default hereunder by its respective grantor within the same time periods after its receipt of notice of any such default as are set forth hereinabove with respect to such grantor.

10. Estoppel Certificates. Any party hereto, upon receipt of a written request from any other party, within a reasonable time thereafter (which in no event shall exceed fifteen (15) calendar days), shall issue and furnish to said other party or to such other person as may be designated by said other party a written estoppel certificate stating that all obligations theretofore payable or performable by the requesting party under this Agreement have been paid in full or otherwise fully performed or satisfied as of the date of such certificate or, if any such obligation has not been paid in full or otherwise fully performed or satisfied, setting forth the amount and type of sums then due and payable and the nature of any other obligations then otherwise performable. Such certificate shall also set forth such other information as may be reasonably requested by the requesting party. Any such certificate shall be conclusive and binding with regard to any matter therein stated as between the party who issued the certificate and any address thereof, provided that such addressee reasonably, and in good faith, relies thereon. If a party fails to issue a certificate within fifteen (15) calendar days after such party's receipt of a request for same, it shall be conclusively presumed that there are not unpaid sums then owed hereunder by the requesting party and that the requesting party is not delinquent in the performance of any other obligation under this Agreement, which sums, if unpaid, or which other obligations, if unperformed, would constitute a breach or default under this Agreement.

11. Reasonableness Standard. Wherever in this Agreement consent or approval with respect to any matter is required to be obtained from any party and the provision calling for such consent or approval provides that such consent or approval shall not be unreasonably withheld, delayed or conditioned or is similarly limited, it is the intention of the parties that, in giving or withholding such consent or approval, the party from whom consent or approval is required shall be governed and bound by standards of "commercial reasonableness", with due regard to any other factors, standards or limitations otherwise expressed with respect to the subject matter or giving of such consent. Notwithstanding the foregoing, however, if and to the extent that under the laws of the State of Georgia, now or hereafter existing, a provision that consent or approval will not be

unreasonably withheld, delayed or conditioned is unenforceable for any reason, it is the intention of the parties that in such event (and only in such event), the limitation of reasonableness expressed in connection with the giving of such consent or approval shall be stricken such that the requirement for such consent or approval shall remain effective nevertheless without such limitation; provided, however, that even under such circumstance, such consent or approval by the party having such right shall not be arbitrarily or capriciously exercised and shall be, to the maximum extent permitted by law, subject to standards of commercial reasonableness.

12. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Georgia.

13. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original of all of which, together, shall constitute one and the same instrument.

14. Original Agreement. Except as expressly restated and amended herein, the Original Agreement, as herein restated and amended, shall and does remain in full force and effect in accordance with its terms. By execution hereof by all parties, the parties do hereby ratify, confirm and re-affirm the Original Agreement, as herein restated and amended hereby.

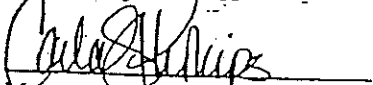
IN WITNESS WHEREOF, TAP, Estates and Park Regency have executed this Agreement under seal as of the day and year first set forth above.

Signed, sealed and delivered  
in the presence of:

TAP ASSOCIATES, L.P., a  
Georgia limited partnership



Unofficial Witness

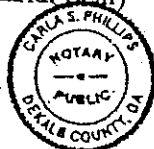


Notary Public

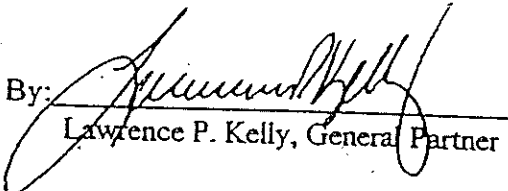
My Commission Expires:

03/20/2000

(Notarial Seal)



My Commission Expires  
March 20, 2000

By:   
Lawrence P. Kelly, General Partner

Signed, sealed and delivered  
in the presence of:

Lusan Larson  
Unofficial Witness

[Signature]  
Notary Public

My Commission Expires:  
My Commission Expires January 10, 2006  
(Notarial Seal)



Signed, sealed and delivered  
In the presence of:

John M. Baker  
Unofficial Witness

Veronica E. Rodriguez  
Notary Public

My Commission Expires:

May 22, 2002  
(Notarial Seal)



ESTATES AT PHIPPS LIMITED PARTNERSHIP,  
a South Carolina limited partnership

By: Estates/Atlanta I, Inc., a South Carolina  
corporation, its general partner

By: [Signature]

Print Name: Robert Murdy  
Title: Managing Partner

PARK REGENCY PARTNERS L.P.,  
a Delaware limited partnership

By: Park Regency Managers L.P.,  
a Delaware limited partnership, its  
general partner

By: PB II Development Corporation,  
a Georgia corporation, its  
general partner

By: [Signature]  
John Kusmiersky, President

[corporate seal]



## EXHIBIT "A"

### Legal Description for Estates Property

All that tract or parcel of land lying and being in Land Lot 44, 17<sup>th</sup> District, City of Atlanta, Fulton County, Georgia and being more particularly described as follows:

TO FIND THE POINT OF BEGINNING commence at the intersection of the easternmost right-of-way line of North Stratford (a 50-foot right-of-way) and the southernmost right-of-way line of Longleaf Drive (a 50-foot right-of-way); proceed thence along the aforesaid southernmost right of way line of Longleaf Drive North 85 degrees 52 minutes 54 seconds East a distance of 224.75 feet to a point; proceed thence, departing from the aforesaid southern right-of-way line of Longleaf Drive, South 00 degrees 31 minutes 47 seconds West a distance of 181.54 feet to an iron pin set, which iron pin set marks the POINT OF BEGINNING.

FROM THE POINT OF BEGINNING THUS ESTABLISHED proceed thence South 89 degrees 27 minutes 18 seconds East a distance of 219.67 feet to a one inch open top pipe found; proceed thence along the southern boundary of lots now or formerly belonging to Virginia C. Kennedy, Mary L. Adams and Craig G. Adams and Selma M. Markwood and Diane M. Thompson, North 85 degrees 42 minutes 25 seconds East a distance of 310.03 feet to a three quarter inch open top pipe found; proceed thence along the southern boundary of lots now or formerly belonging to Rozanne Dibble and Mrs. Lee H. Wysong, South 58 degrees 27 minutes 03 seconds East a distance of 143.22 feet to an iron pin set; proceed thence South 31 degrees 33 minutes 41 seconds West a distance of 373.09 feet to an iron pin set; proceed thence South 14 degrees 06 minutes 39 seconds East a distance of 123.98 feet to an iron pin set; proceed thence along the arc of a curve to the right an arc distance of 77.18 feet to a point, said arc having a radius of 167.00 feet and being subtended by a chord bearing South 65 degrees 31 minutes 56 seconds West 76.50 feet in length; proceed thence South 78 degrees 46 minutes 22 seconds West a distance of 112.05 feet to a point; proceed thence along the arc of a curve to the right an arc distance of 166.25 feet to a point, said arc having a radius of 811.60 feet and being subtended by a chord bearing South 84 degrees 38 minutes 35 seconds West 165.96 feet in length; proceed thence North 89 degrees 29 minutes 10 seconds West a distance of 17.11 feet to a point; proceed thence North 89 degrees 29 minutes 11 seconds West a distance of 128.98 feet to an iron pin set (which iron pin is located 1.96 to the South of a three quarter inch open top pipe); proceed thence along the eastern boundary of lots now or formerly belonging to Constance McKellar, Jane Kaufmann, Galen B. Kilburn, Sr., Christine Franz, and Pattie M. Kraus North 00 degrees 31 minutes 03 seconds East a distance of 559.67 feet to an iron pin set, which iron pin set marks the POINT OF BEGINNING.

The aforesaid tract or parcel of land being more particularly described at "Tract A" on that certain Boundary Survey & Easement Exhibit of Estates at Phipps prepared for Park Regency Partners L.P., The Bank of Nova Scotia and Mellon Bank, N.A., Lehman Brothers Holdings, Inc. and Chicago Title Insurance Company by W.L. Jorden & Co., Inc. dated November 12, 1998, last revised March 17, 1999, and containing approximately 6.7132 acres of land.

## EXHIBIT "B"

### Legal Description for Remaining TAP Property

ALL THAT TRACT OR PARCEL of land lying and being in the City of Atlanta, in Land Lots 44 and 45 of the 17<sup>th</sup> District, Fulton County, Georgia and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING of the tract of land herein described, commence at an iron pin placed on the southerly right-of-way line of Longleaf Drive (a 50-foot right-of-way), which iron pin placed is located North 85 degrees 48 minutes 28 seconds East, as measured along said southerly right-of-way line of Longleaf Drive, a distance of 444.68 feet from the intersection of said southerly right-of-way line of Longleaf Drive with the easterly right-of-way line of North Stratford Road (a 50-foot right-of-way); thence leaving said right-of-way line of Longleaf Drive, and running South 00 degrees 24 minutes 16 seconds West a distance of 199.63 feet to an iron pin found, said iron pin found being the TRUE POINT OF BEGINNING; FROM THE TRUE POINT OF BEGINNING thus established, running thence North 85 degrees 49 minutes 26 seconds East a distance of 310.02 feet to an iron pin found; running thence South 58 degrees 20 minutes 56 seconds East a distance of 532.54 feet to an iron pin found; running thence South 31 degrees 43 minutes 20 seconds West a distance of 299.23 feet to an iron pin found; running thence South 09 degrees 41 minutes 00 seconds West a distance of 102.09 feet to an iron pin placed; running thence South 51 degrees 32 minutes 38 seconds West a distance of 224.55 feet to an iron pin found; running thence South 20 degrees 46 minutes 56 seconds West a distance of 122.90 feet to a point on the right-of-way line of Buckhead Loop (a variable width right-of-way); running thence along the northerly right-of-way line of Buckhead Loop North 69 degrees 04 minutes 26 seconds West a distance of 45.74 feet to a point; running thence along the northerly right-of-way line of Buckhead Loop South 20 degrees 56 minutes 24 seconds West a distance of 100.00 feet to a point; running thence along the northerly right-of-way line of Buckhead Loop South 20 degrees 24 minutes 48 seconds West a distance of 17.73 feet to a point; running thence along the northerly right-of-way line of Buckhead Loop South 62 degrees 52 minutes 24 seconds West a distance of 38.07 feet to a point; running thence along the northerly right-of-way line of Buckhead Loop and following a curve to the left with a radius of 1,029.93 feet, a chord bearing of North 81 degrees 44 minutes 49 seconds West, and a chord distance of 77.90 feet, an arc length of 77.92 feet to a point; running thence along the northerly right-of-way line of Buckhead Loop and following a curve to the left with a radius of 1,024.93 feet, a chord bearing of North 88 degrees 47 minutes 24 seconds West, and a chord distance of 200.82 feet, an arc length of 201.15 feet to a point; running thence along the northerly right-of-way line of Buckhead Loop and following a curve to the left with a radius of 1,024.93 feet, a chord bearing of South 79 degrees 20 minutes 25 seconds West, and a chord distance of 223.07 feet, an arc length of 223.51 feet to a point; running thence along the northerly right-of-way line of Buckhead Loop South 74 degrees 28 minutes 47 seconds West 221.33 feet to a point; running thence along

the northerly right-of-way line of Buckhead Loop North 01 degree 18 minutes 34 seconds East a distance of 48.21 feet to a point on the southerly right-of-way line of North Stratford Road; running thence along the southerly and easterly right-of-way line of North Stratford Road and following a curve to the left with a radius of 62.00 feet, a chord bearing of North 08 degrees 13 minutes 34 seconds East, and a chord distance of 123.29 feet, an arc length of 208.06 feet to a point; running thence along the northeasterly right-of-way line of North Stratford Road North 45 degrees 44 minutes 46 seconds West a distance of 18.83 feet to a point; running thence along the easterly right-of-way line of North Stratford Road North 02 degrees 51 minutes 27 seconds East a distance of 58.19 feet to an iron pin found; running thence along the easterly right-of-way line of North Stratford Road North 00 degrees 16 minutes 28 seconds East a distance of 269.01 feet to an iron pin placed; running thence South 89 degrees 14 minutes 25 seconds East; and leaving the easterly right-of-way line of North Stratford Road, a distance of 225.06 feet to an iron pin found; running thence North 00 degrees 37 minutes 54 seconds East a distance of 557.65 feet to a point; running thence South 89 degrees 22 minutes 06 seconds East a distance of 219.69 feet to the iron pin found at the TRUE POINT OF BEGINNING; being shown as 20.3239 aggregate acres on Boundary Survey for "The Sterling Group, Inc., Pope & Land Enterprises, Inc., TAP Associates, LP and Ticor Title Insurance Company," prepared by Woolley & Associates, Inc., under the seal and certification of James W. Woolley, Georgia Registered Land Surveyor No. 1478, dated August 6, 1990, last revised January 21, 1992.

TOGETHER WITH the following:

Air Rights Tract (1.485 acres)

ALL OF THE AIR SPACE and rights granted by, and subject to the terms and conditions of, Department of Transportation Air Space Quitclaim Deed dated December 11, 1989, recorded in Deed Book 13048, Page 045, Fulton County, Georgia Records, appurtenant to the following described parcel of land and lying with the boundaries of such parcel over and above a plane at an elevation of twenty-four (24) feet above the surface of the finished roadway to be constructed thereon by the Department of Transportation:

ALL THAT TRACT OR PARCEL of land lying and being in the City of Atlanta, in Land Lot 45 of the 17<sup>th</sup> District, Fulton County, Georgia and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING of the tract of land herein described, commence at an iron pin found on the southerly right-of-way line of Longleaf Drive (a 50-foot right-of-way), which iron pin found is located North 85 degrees 48 minutes 28 seconds East as measured along said southerly right-of-way line of Longleaf Drive, a distance of 225.00 feet from the intersection of said southerly right-of-way line of Longleaf Drive with the easterly right-of-way line of North Stratford Road (a 50-foot right-of-way); running thence along the southerly right-of-way line of Longleaf Drive, North 85 degrees 48 minutes 28 seconds East a distance of 219.68 feet to an iron pin placed; running thence South 00 degrees 24 minutes 16 seconds West, and leaving said right-of-way line of Longleaf Drive, a distance of 199.63 feet to an iron pin found; running thence

North 85 degrees 49 minutes 26 seconds East a distance of 310.02 feet to an iron pin found; running thence South 58 degrees 20 minutes 56 seconds East a distance of 532.54 feet to an iron pin found; running thence South 31 degrees 43 minutes 20 seconds West a distance of 299.23 feet to an iron pin found; running thence South 09 degrees 41 minutes 00 seconds West a distance of 102.09 feet to an iron pin placed; running thence South 51 degrees 32 minutes 38 seconds West a distance of 224.55 feet to an iron pin found; running thence South 20 degrees 46 minutes 56 seconds West a distance of 122.90 feet to a point located on the northerly right-of-way line of Buckhead Loop (a variable width right-of-way), which point is the TRUE POINT OF BEGINNING; FROM THE TRUE POINT OF BEGINNING thus established, running thence along the northerly right-of-way line of Buckhead Loop North 69 degrees 04 minutes 26 seconds West a distance of 45.74 feet to a point; running thence along the northerly right-of-way line of Buckhead Loop, South 20 degrees 56 minutes 24 seconds West a distance of 100.00 feet to a point; running thence along the northerly right-of-way line of Buckhead Loop, South 20 degrees 24 minutes 48 seconds West a distance of 17.73 feet to a point; running thence along the northerly right-of-way line of Buckhead Loop, South 62 degrees 52 minutes 24 seconds West a distance of 38.07 feet to a point; running thence along the northerly right-of-way line of Buckhead Loop, and following a curve to the left with a radius of 1,029.93 feet, a chord bearing of North 81 degrees 44 minutes 49 seconds West, and a chord distance of 77.90 feet, an arc length of 77.92 feet to a point; running thence along the northerly right-of-way line of Buckhead Loop, and following a curve to the left with a radius of 1,024.93 feet, a chord bearing of South 86 degrees 24 minutes 16 seconds West, and a chord distance of 365.22 feet, an arc length of 367.18 feet to a point; running thence South 11 degrees 08 minutes 06 seconds East a distance of 78.09 feet to a point within the Buckhead Loop right-of-way; running thence South 11 degrees 13 minutes 08 seconds East a distance of 26.62 feet to a point within the Buckhead Loop right-of-way; running thence South 88 degrees 33 minutes 54 seconds East a distance of 163.96 feet to a point within the Buckhead Loop right-of-way; running thence North 89 degrees 24 minutes 35 seconds East a distance of 130.85 feet to a point within the Buckhead Loop right-of-way; running thence South 89 degrees 28 minutes 40 seconds East a distance of 120.91 feet to a point within the Buckhead Loop right-of-way; running thence North 31 degrees 42 minutes 35 seconds East a distance of 161.85 feet to a point within the Buckhead Loop right-of-way; running thence North 31 degrees 43 minutes 31 seconds East a distance of 20.14 feet to a point within the Buckhead Loop right-of-way; running thence North 20 degrees 46 minutes 56 seconds East a distance of 80.23 feet to the TRUE POINT OF BEGINNING, as shown on Boundary Survey for "The Sterling Group, Inc., Pope & Land Enterprises, Inc., TAP Associates, LP and Ticor Title Insurance Company," prepared by Woolley & Associates, Inc., under the seal and certification of James W. Woolley, Georgia Registered Land Surveyor No. 1478, dated August 6, 1990, last revised January 21, 1992.

LESS AND EXCEPT from the above-described parcel of land that portion thereof being more particularly described as follows:

ALL THAT TRACT or parcel of land lying and being in Land Lot 44 of the 17th District of Fulton County, City of Atlanta, Georgia, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING, commence at an iron pin set at the intersection of the southern margin of the right-of-way of Longleaf Drive (50-foot right-of-way), with the eastern margin of the right-of-way of North Stratford Road (50-foot right-of-way); thence running easterly along the southern margin of the right-of-way of Longleaf Drive, north 85 degrees 52 minutes 54 seconds east, a distance of 224.75 feet to a point; thence leaving the southern margin of the right-of-way of Longleaf Drive, and running south 00 degrees 31 minutes 47 seconds west, a distance of 181.54 feet to an iron pin set, which is the TRUE POINT OF BEGINNING; from the TRUE POINT OF BEGINNING, as thus established, thence running south 89 degrees 27 minutes 18 seconds east, a distance of 219.67 feet to a one inch open top pipe found; thence running north 85 degrees 42 minutes 25 seconds east, a distance of 310.03 feet to a 3/4 inch open top pipe found; thence running south 58 degrees 27 minutes 03 seconds east a distance of 143.22 feet to an iron pin set; thence running south 31 degrees 33 minutes 41 seconds west a distance of 373.09 feet to an iron pin set; thence running south 14 degrees 06 minutes 30 seconds east a distance of 123.98 feet to an iron pin set on the northwestern margin of a Roadway Tract (variable right-of-way); thence running along the northwestern margin of the right-of-way of said Roadway Tract, along the arc of a curve to the right (said arc being subtended by a chord bearing south 65 degrees 31 minutes 56 seconds west a distance of 76.50 feet) a distance of 77.18 feet to a point; thence continuing along said margin, south 78 degrees 46 minutes 22 seconds west a distance of 112.05 feet to a point; thence continuing along said margin, along arc of a curve to the right (said arc being subtended by a chord bearing south 84 degrees 38 minutes 35 seconds west a distance of 165.96 feet), a distance of 166.25 feet to a point located on the northern margin of said Roadway Tract; thence running along the northern margin of the right-of-way of said Roadway Tract, north 89 degrees 29 minutes 10 seconds west a distance of 17.11 feet to a point; thence leaving said margin and running north 89 degrees 29 minutes 11 seconds west a distance of 128.98 feet to an iron pin set; thence running north 00 degrees 31 minutes 03 seconds east a distance of 559.67 feet to an iron pin set, which is the TRUE POINT OF BEGINNING; said property containing 6.7132 acres, as shown on that certain Boundary Survey & Easement Exhibit of Estates at Phipps prepared for Estates at Phipps Limited Partnership, SouthTrust Bank of Alabama, National Association and Lawyers Title Insurance Corporation by W.L. Jorden & Co., Inc. dated November 12, 1998.

AND LESS AND EXCEPT from the above-described parcel of land that portion thereof being more particularly described as follows:

ALL THAT TRACT OR PARCEL of land lying and being in the City of Atlanta, in Land Lot 44 of the 17th District, Fulton County Georgia, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING of the tract of land herein described, commence at the intersection of the eastern right-of-way line of North Stratford (50-foot right-of-way) with the southern right-of-way line of Longleaf Drive (50-foot right-of-way); running thence along said right-of-way line of Longleaf Drive, north 85 degrees 52 minutes 54 seconds east a distance of 224.75 feet to a point; thence leaving said right-of-way line, and running south 00 degrees 31 minutes 47 seconds west a distance of 181.54 feet to an iron pin set; running thence south 89 degrees 27 minutes 18

seconds east a distance of 219.67 feet to a 1-inch open top pipe found; running thence north 85 degrees 42 minutes 25 seconds east a distance of 310.03 feet to a 3/4 inch open top pipe found; running thence south 58 degrees 27 minutes 03 seconds east a distance of 143.22 feet to an iron pin set, said iron pin set being the TRUE POINT OF BEGINNING; FROM THE TRUE POINT OF BEGINNING thus established, running thence south 31 degrees 33 minutes 41 seconds west a distance of 373.09 feet to an iron pin set; running thence south 14 degrees 06 minutes 39 seconds east a distance of 123.98 feet to an iron pin set; running thence north 52 degrees 42 minutes 58 seconds east a distance of 56.30 feet to a point; running thence northeasterly along the arc of a curve to the right, said arc being subtended by a chord line having bearing of north 89 degrees 20 minutes 52 seconds east and a length of 228.74 feet, said curve having a radius of 268.00 feet, an arc distance of 236.32 feet to a point; running thence northeasterly along the arc of a curve to the left, said arc being subtended by a chord line having a bearing of north 69 degrees 58 minutes 57 seconds east and a length of 56.20 feet, said curve having a radius of 40.00 feet, an arc distance of 62.31 feet to a point located on the northwestern right-of-way line of Phipps Boulevard (formerly Wieuca Connector); running thence along said right-of-way line, north 25 degrees 21 minutes 22 seconds east a distance of .06 feet to a point; running thence along said right-of-way line, north 29 degrees 41 minutes 30 seconds east a distance of 152.24 feet to a point; running thence northeasterly along the arc of a curve to the right in said right-of-way line, said arc being subtended by a chord line having a bearing of north 32 degrees 19 minutes 56 seconds east and a length of 89.20 feet, said curve having a radius of 563.37 feet, an arc distance of 89.29 feet to a point; running thence north 58 degrees 32 minutes 02 seconds west a distance of 54.25 feet to a point; running thence north 58 degrees 27 minutes 03 seconds west a distance of 279.47 feet to the iron pin set at the TRUE POINT OF BEGINNING; said tract of land containing approximately 2.6992 acres and designated as "Tract B" according to that certain Boundary Survey & Easement Exhibit of Estates at Phipps prepared for Park Regency Partners L.P., The Bank of Nova Scotia and Mellon Bank, N.A., Lehman Brothers Holdings, Inc. and Chicago Title Insurance Company by W.L. Jorden & Co., Inc. dated November 12, 1998, last revised March 17, 1999.

EXHIBIT "C"

Legal Description for  
Park Regency Property

ALL THAT TRACT OR PARCEL of land lying and being in the City of Atlanta, in Land Lot 44 of the 17th District, Fulton County Georgia, and being more particularly described as follows:

TO FIND THE TRUE POINT OF BEGINNING of the tract of land herein described, commence at the intersection of the eastern right-of-way line of North Stratford (50-foot right-of-way) with the southern right-of-way line of Longleaf Drive (50-foot right-of-way); running thence along said right-of-way line of Longleaf Drive, north 85 degrees 52 minutes 54 seconds east a distance of 224.75 feet to a point; thence leaving said right-of-way line, and running south 00 degrees 31 minutes 47 seconds west a distance of 181.54 feet to an iron pin set; running thence south 89 degrees 27 minutes 18 seconds east a distance of 219.67 feet to a 1-inch open top pipe found; running thence north 85 degrees 42 minutes 25 seconds east a distance of 310.03 feet to a 3/4 inch open top pipe found; running thence south 58 degrees 27 minutes 03 seconds east a distance of 143.22 feet to an iron pin set, said iron pin set being the TRUE POINT OF BEGINNING; FROM THE TRUE POINT OF BEGINNING thus established, running thence south 31 degrees 33 minutes 41 seconds west a distance of 373.09 feet to an iron pin set; running thence south 14 degrees 06 minutes 39 seconds east a distance of 123.98 feet to an iron pin set; running thence north 52 degrees 42 minutes 58 seconds east a distance of 56.30 feet to a point; running thence northeasterly along the arc of a curve to the right, said arc being subtended by a chord line having bearing of north 89 degrees 20 minutes 52 seconds east and a length of 228.74 feet, said curve having a radius of 268.00 feet, an arc distance of 236.32 feet to a point; running thence northeasterly along the arc of a curve to the left, said arc being subtended by a chord line having a bearing of north 69 degrees 58 minutes 57 seconds east and a length of 56.20 feet, said curve having a radius of 40.00 feet, an arc distance of 62.31 feet to a point located on the northwestern right-of-way line of Phipps Boulevard (formerly Wieuca Connector); running thence along said right-of-way line, north 25 degrees 21 minutes 22 seconds east a distance of .06 feet to a point; running thence along said right-of-way line, north 29 degrees 41 minutes 30 seconds east a distance of 152.24 feet to a point; running thence northeasterly along the arc of a curve to the right in said right-of-way line, said arc being subtended by a chord line having a bearing of north 32 degrees 19 minutes 56 seconds east and a length of 89.20 feet, said curve having a radius of 563.37 feet, an arc distance of 89.29 feet to a point; running thence north 58 degrees 32 minutes 02 seconds west a distance of 54.25 feet to a point; running thence north 58 degrees 27 minutes 03 seconds west a distance of 279.47 feet to the iron pin set at the TRUE POINT OF BEGINNING; said tract of land containing approximately 2.6992 acres and designated as "Tract B" according to that certain Boundary Survey & Easement Exhibit of Estates at Phipps prepared for Park Regency Partners L.P., The Bank of Nova Scotia and Mellon Bank, N.A., Lehman Brothers Holdings, Inc. and Chicago Title Insurance Company by W.L. Jorden & Co., Inc. dated November 12, 1998, last revised March 17, 1999.