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Juanita Hicks
Clerk of Superior Court
Fulton County, Georgia

CROSS REFERENCE

Return to:

Weissman, Nowack, Curry & Wilco, P.C. 1349 West Peachtree Street, Suite 1500 Atlanta, Georgia 30309 Attn: Robert S. Stein

STATE OF GEORGIA

COUNTY OF FULTON

Cross Reference to Deed Book 20301, Page 248, Fulton County, Georgia Records

FIRST AMENDMENT TO THE DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS FOR WESTMINSTER AT CRABAPPLE SUBDIVISION

WHEREAS, Westminster Homes Limited, a Georgia corporation, filed on October 1, 1995 and recorded on November 30, 1995, a Declaration of Covenants, Restrictions and Easements for Westminster at Crabapple Subdivision in Deed Book 20301, Page 248, et seq., Fulton County, Georgia records; ("Original Declaration") and

WHEREAS, Westminster at Crabapple Homeowners Association, Inc. was incorporated under the Georgia Non-Profit Corporation Act on February 26, 1996; and

WHEREAS, Article IX, Section 9.3 of the Declaration provides that the Declaration may be amended by the affirmative vote of those members of the Westminster at Crabapple Subdivision Homeowners Association, Inc. holding two-thirds (66 2/3%) of the total votes present at a meeting called for the consideration of such amendment; and

WHEREAS, this Amendment has been approved by a vote of at least two-thirds (66 2/3%) of the Owners present in person or by proxy at a meeting called for the consideration of this amendment; and

WHEREAS, this Amendment does not materially and adversely affect the security title, and interest of any mortgage holder; provided, however, in the event a court of competent jurisdiction determines that this Amendment does materially and adversely affect the security title and interest of any such mortgage holder without such mortgage holder's consent in writing to this Amendment, then this Amendment shall not be binding on the mortgage holder so involved, unless such mortgage holder consents to this Amendment; and if such consent is not forthcoming, then the provisions of the Declaration prior to this Amendment shall control with respect to the affected mortgage holder;

NOW THEREFORE, the Declaration of Covenants, Restrictions and Easement for Westminster at Crabapple Subdivision is hereby amended as follows:

1.

Article I of the Declaration is hereby amended by adding the following provision to the beginning thereof:

The name of the subdivision is Westminster at Crabapple, which is a residential property owners' development and which hereby submits to the Georgia Property Owners' Association Act, O.C.G.A. Section 44-3-220, et seq. (Michie 1982), as may be amended (the "Act").

2.

Article II, Section 2.1.1 of the Declaration is hereby amended by deleting the following language therefrom:

The Declarant may, from time to time, convey real and personal property to the Association, or grant easements to the Association, at no expense to the Association and in accordance with this Article II, to be held by the Association as Common Property. The Association hereby covenants and agrees to accept from the Declarant and shall be deemed to automatically accept, all such conveyances of Common Property.

3.

Article II, Section 2.1.2 of the Declaration is hereby amended by deleting that provision in its entirety.

4.

Article II, Section 2.1.3 of the Declaration is hereby amended by deleting that provision in its entirety.

5.

Article II, Section 2.1.4 of the Declaration is hereby amended by deleting that provision in its entirety.

6.

Article III, Section 3.3 of the Declaration is hereby amended by deleting the following language therefrom:

The Declarant shall be the sole Class B Member and shall be entitled to three (3) votes for each Lot owned; provided, however, in no event shall the Class B Member have less than the total number of class A votes plus one (1). The Class B Membership shall cease and be converted to Class A Membership at such time as Declarant no longer retains the right to appoint and remove members of the Board and officers of the Association pursuant to Section 3.8 below.

Article III, Section 3.5 of the Declaration is hereby amended by adding the following language to the end thereof:

The Board shall also have the power to impose reasonable fines, which shall constitute a lien upon the Owner's Lot, and to suspend an Owner's right to vote or to use the Common Property for violation of any duty imposed under this Declaration, the Bylaws, or any Association rules and regulations; provided, however, nothing herein shall authorize the Association or the Board to deny ingress and egress to or from a Lot. If any Occupant violates the Declaration, Bylaws or Association rules and a fine is imposed, the fine may be imposed against the Owner and/or Occupant, subject to Article VIII, Section 8.6 of this Declaration.

8.

Article III, Section 3.8 of the Declaration is hereby amended by deleting that provision in its entirety.

9.

Article IV, Section 4.1 is hereby amended so that it reads in its entirety as follows:

Covenant for Assessment and Creation of Lien and Personal Obligation. Each Owner, jointly and severally, for himself, his heirs, legal representatives, successors and assigns, by acceptance of a deed for a Lot, whether or not the covenants contained herein shall be expressed in any such deed, hereby covenants and agrees as follows: (a) to pay the Association the annual assessments which may or shall be levied by the Association pursuant to this Declaration against all Lots owned by him; (b) to pay to the Association any special assessments for capital improvements and other charges which may or shall be levied by the Association pursuant to this Declaration for all Lots owned by him; (c) that there is hereby created a continuing charge and lien upon all Lots owned by him against which all such assessments are made to secure payment of such assessments and any interest thereon as provided herein and all charges and costs of collection, including reasonable attorney's fees actually incurred; (d) that such continuing charge and lien on such Lots bins such Lots in the hands of the then Owner and the Owner's heirs, devises, legal representatives, successors and assigns. Such charge and lien is superior to any and all charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon such Lots whether arising from or imposed by judgment or decree or by any agreement, contract, mortgage, deed to secure debt, or other instrument, except: (I) liens for ad valorum taxes on the Lot; (ii) the lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording of this Declaration; and, (iii) the lien of any secondary purchase money mortgage covering the Lot, provided the grantee nor any successor grantee on the mortgage is the seller of the Lot; (e) that no sale or transfer at foreclosure or in lieu of foreclosure shall relieve any Lot or Lots from liability for any assessment thereafter assessed; and, (f) that all annual and special Assessments (together with interest thereon as provided in this Declaration and costs of collection including reasonable attorney's fees) levied against any Lot or Lots owned by him during the period that he is an owner shall be (in addition to being a continuing charge and lien against such Lot or Lots as provided in this Declaration) a personal obligation which will survive any sale or transfer of the Lot or Lots owned by him.

The Declaration is hereby amended by adding the following new Section 4.5(c) to Article IV thereof:

(c) special assessments covering the (i) total costs, including attorney's fees incurred by the Association in enforcing the Declaration, Bylaws or Association rules, (ii) any common expenses benefiting less than all the Lots, (iii) any common expenses occasioned by the conduct of less than all of those entitled to occupy all of the Lots or by the licensees or invitees of any such Lot or Lots, (iv) expenses for periodic maintenance, repair, and replacement of any portion of the limited Common Areas.

11.

Article IV, Section 4.6.2 is hereby Amended by deleting the first sentence therefrom and substituting the following language therefor:

All Owners shall be given written notice by the Board not less than twenty-one (21) days in advance of any meeting of the Owners at which the Board shall propose taking action pursuant to Section 4.4.3 or 4.5.

12.

Article IV, Section 4.7 is hereby amended by the addition of the following language to the beginning thereof:

Except as provided in Section 4.5(c), ...

13.

Article IV, Section 4.8 of the Declaration is hereby amended by deleting that provision in its entirety and substituting the following language therefor:

<u>Delinquent Assessments</u>. All assessments and related charges not paid on or before the due date shall be delinquent, and the Owner shall be in default.

- (i) If any monthly installment of annual assessments or any part thereof is not paid in full by the tenth (10th) day of the month or if any other charge is not paid within ten (10) days of the due date, a late charge equal to the greater of ten (\$10.00) dollars or ten (10%) percent of the amount not paid, or such higher amounts as may be authorized by the Act, may be imposed without further notice or warning to the delinquent Owner, and interest at the rate of ten (10%) percent per anum, or such higher rate as permitted by the Act, shall accrue from the due date.
- (ii) If part payment of assessments and related charges is made, the amount received may be applied by the Board, in respective order, to costs and attorney's fees, late charges, interest, delinquent assessments, and current assessments. Late charges may be assessed on delinquencies which are created by the application of current payments to outstanding delinquent assessments or charges.

- (iii) If the Board permits payment of the annual assessments in installments, and assessments, fines or other charges, or any part thereof, due from an Owner remain delinquent and unpaid for more than fifteen (15) days from the date due, then the Board may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment with ten (10) days written notice.
- (iv) If assessments, fines or other charges, or any part thereof, remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association, acting through the Board, may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the Bylaws, the Act and Georgia law, including reasonable attorney's fees actually incurred, and suspend the Owner's and Occupant's right to use the Common Property (provided, however, the Board may not deny ingress or egress to or from the Lot).

Article IV, Section 4.9 of the Declaration is hereby amended by deleting that provision in its entirety and substituting the following language therefor:

Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Lot, or a lender considering a loan to be secured by a Lot, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against such Lot. The Association shall respond in writing within five (5) business days of receipt of the request for a statement; provided, however, the Association may require the payment of a fee, not exceeding ten (\$10.00) dollars or such higher amount as may be authorized under the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Lot as of the date specified therein. The Association may require an additional fee not to exceed twenty five (\$25.00) dollars if the Association provides a copy of the Declaration and Bylaws to any such Person in connection with a closing or otherwise upon request.

15.

Article IV, Section 4.10 of the Declaration is hereby amended by deleting that provision in its entirety.

16.

Article IV, Section 4.11 of the Declaration is hereby amended by deleting that provision in its entirety.

17.

Article V, Section 5.1.1 of the Declaration is hereby amended by deleting the following language therefrom:

Notwithstanding anything to the contrary contained herein, all members of the Architectural Control Committee shall be appointed by the Declarant until the first to occur of: (a) December 31, 2005, or (b) the date upon which every Lot has been conveyed by the Declarant to a third party or parties (with the Declarant retaining no further interest or estate in the Submitted property). Upon the expiration of the declarant's right to appoint members of the Architectural Control Committee,

Article V, Section 5.1.1 of the Declaration is hereby amended by adding the following language to the end thereof:

If the Board fails to appoint members of the Architectural Control Committee, then the Board shall serve in such capacity.

19.

Article V, Section 5.2 of the Declaration is hereby amended by adding the following language to the end thereof:

In addition to the above, the Board shall have the authority and standing, on behalf of the Association, to impose reasonable fines and to pursue all legal and equitable remedies available to enforce the provisions of this Article V and its decisions or those of the ACC. All costs of any such action, including reasonable attorney's fees, may be assessed against such Lot and the Owner or Owners thereof.

20.

Article V, Section 5.5 of the Declaration is hereby amended by deleting the phrase "unless two (2) sets" from the first sentence thereof and substituting the phrase "unless a set" so that the first sentence thereof reads as follows:

No structure shall be commenced, erected, placed moved onto or permitted to remain on any Lot nor shall any existing structure upon any Lot be altered in any way which materially changes the exterior appearance of the Structure or Lot, unless a set of plans and specifications therefor shall have been submitted to and approved in writing by the Architectural Control Committee.

21.

Article V, Section 5.6 of the Declaration is hereby amended by adding the following language to the end thereof:

All improvements approved by the ACC hereunder must be commenced within one year from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the ACC, unless the ACC gives a written extension for commencing the work. Additionally, except with written ACC approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the ACC hereunder shall be completed within 120 days of commencement unless another period for completion is approved by the ACC. Any Structure not completed within this timeframe shall be deemed to be a nonconforming structure. Upon written request from the Board, a violating Owner shall, at his or her own cost and expense, remove such nonconforming construction, alteration or other work and restore the property to substantially the same condition as existed prior to the commencement of such construction, alteration or work. Should the Owner fail to do so, the Board or its designees shall have the right, in addition to all other available remedies, to enter the property, remove the violation and restore the property, or obtain a court order compelling the violating Owner to do so. All costs thereof, including reasonable attorney's fees actually

incurred, may be assessed against such Lot. Furthermore, the Board shall have the authority to record in the Fulton County land records notices of violation of the provisions of this Article.

22.

Article V, Section 5.8 of the Declaration is hereby amended so that such section reads in ins entirety as follows:

Obligation to Act. The Architectural Control Committee or its designated representative shall approve or disapprove any complete application before it within thirty (30) days after the application and such information as the Architectural Control Committee may reasonably require shall have been submitted. If the Architectural Control Committee or its designated representative fails to approve or to disapprove such application within forty-five (45) days after the application and such information as the ACC may reasonably require shall have been submitted, its approval will not be required and this subparagraph will be deemed complied with, unless such structure or improvement otherwise is in violation of the Declaration, the Bylaws, the design standards, the Association's rules and regulations, or applicable zoning ordinances.

23.

Article V, Section 5.15 of the Declaration is hereby amended by deleting that provision in its entirety and substituting the following language therefor:

No Waiver of Future Approvals. Each Owner acknowledges that the members of the Board and the ACC will change from time to time and that interpretation, application and enforcement of the architectural standards may vary accordingly. The approval of either the Board or the ACC of any proposals, plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval of the Board or the ACC, shall not constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent.

24.

Article VI, Section 6.1 of the Declaration is hereby amended by deleting that provision in its entirety and substituting the following language therefor:

Residential Use of the Property. Each Lot shall be used for residential purposes only, and no trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant residing in a dwelling on a Lot may conduct such ancillary business activities within the dwelling so long as:

- (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside of the dwelling;
- (2) the business activity does not involve visitation of the dwelling by employees, clients, customers, suppliers or other business invitees in greater volume than would normally be expected for guest visitation to a residential dwelling without business activity;
- (3) the business activity conforms to all zoning requirements for the Subdivision;
- (4) the business activity does not increase traffic in the Property in excess of what would normally be expected for residential dwellings in the Property without business activity (other than

by deliveries by couriers, express mail carriers, parcel delivery services and other such similar delivery services);

- (5) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the Association's ability to obtain insurance coverage;
- (6) the business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision, as determined in Board's discretion; and
- (7) the business activity does not result in a materially greater use of common area facilities or Association services.

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

25.

Article VI, Section 6.11 of the Declaration is hereby amended by deleting that provision in its entirety and substituting the following language therefor:

<u>Pets</u>. No Owner or occupant may keep any pets other than a reasonable number of generally recognized household pets on any portion of the Subdivision, as determined in the Board's discretion.

No Owner or occupant may keep, breed or maintain any pet for any commercial purpose. Pets may not be left unattended outdoors. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while outdoors in unfenced areas. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Subdivision without prior written approval of the Board or the Architectural Control Committee as provided in Article V hereof. Feces left by pets upon the Common Property, on any Lot or in any dwelling, including the pet owner's Lot or dwelling, must be removed promptly by the owner of the pet or the person responsible for the pet.

No potbellied pigs may be brought onto or kept at the Subdivision at any time. No pit bulldogs or other dogs determined in the sole discretion of the Board to be dangerous dogs may be brought onto or kept on the Subdivision at any time by any Lot Owner, occupant, or guest of an Owner or Occupant. Any pet which endangers the health of any Owner or Occupant of any Lot or which creates a nuisance or unreasonable disturbance, as may be determined in the Board's sole discretion, must be permanently removed from the Subdivision upon seven (7) days' written notice by the Board. If the Owner or Occupant fails to comply with such notice, the Board may remove the pet and/or obtain a court order requiring the Owner or Occupant to do so. Any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any member of the community may be removed by the Board without prior notice to the pet's owner.

Article VI, Section 6.13 of the Declaration is hereby amended by deleting that provision in its entirety and substituting the following language therefor:

Signs. Except as may be required by legal proceedings, no signs, advertising posters or billboards of any kind shall be erected, placed, or permitted to remain on the Subdivision without the prior written consent of the Board or its designee, except that two (2) professional security signs not to exceed twelve (12") inches by twelve (12") inches each in size may be displayed on a Lot and one (1) professionally lettered "For Rent" or "For Sale" sign not to exceed two (2') feet by two (2') feet in size may be displayed on a Lot being offered for sale or for lease. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association. The Board also shall have the authority to adopt regulations permitting temporary signs on Lots announcing open houses, births, birthdays or other events for limited periods of time.

27.

Article VI, Section 6.15 of the Declaration is hereby amended by deleting that provision in its entirety and substituting the following language therefor:

Antennas and Satellite Dishes. No transmission antenna, of any kind, may be erected anywhere on the Property without written approval of the Board of Directors or the Architectural Control Committee. No direct broadcast satellite (DBS) antenna or multi-channel multi-point distribution service (MMDS) larger than one meter in diameter shall be placed, allowed, or maintained upon any portion of the Subdivision, including a Lot. DBS and MMDS antennas one meter or less in diameter and television broadcast service antennas may only be installed in accordance with Federal Communication Commission (FCC) rules and the rules and regulations of the Association authorized by the FCC, both as may be amended from time to time. Such items shall be installed in the least conspicuous location available on the Lot which permits reception of an acceptable signal. Except as provided by this Section, no antenna or other device for the transmission or reception of television signals, radio signals or any form of electromagnetic wave or radiation shall be erected, used or maintained outdoors on any portion of the Subdivision, whether attached to a home or structure or otherwise; provided, however, that the Association shall have the right to erect, construct and maintain such devices.

28.

The Declaration is hereby amended by adding the following new section 6.28 to Article VI thereof:

Abandoned Personal Property. Personal property is prohibited from being stored, kept, or allowed to remain for a period of more than forty-eight (48) hours upon any portion of the Common Property without prior written Board permission. If the Board determines that a violation exists, then, not less than forty-eight (48) hours after written notice is placed on the personal property and/or on the front door of the property owner's dwelling, if known, the Board may remove and either discard or store the personal property in a location which the Board may determine. The notice shall include the name and telephone number of the person or entity which will remove the property and the name and telephone number of a person to contact regarding the alleged violation.

The Board, in its discretion, may determine that an emergency situation exists and may exercise its removal rights hereunder without prior notice to the property owner; provided, however, in such

case, the Board shall give the property owner, if known, notice of the removal of the property and the location of the property within three (3) days after the property is removed.

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

29.

The Declaration is hereby amended by adding the following new Section 6.29 to Article VI thereof:

<u>Firearms and Fireworks</u>. The display or discharge of firearms or fireworks on the Common Property is prohibited; provided, however, that that the display of lawful firearms on the Common Property is permitted by law enforcement officers and also is permitted for the limited purpose of transporting the firearms across the Common Property to or from the Owner's Lot. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. The term "fireworks" shall include those items as listed in O.C.G.A. Section 25-10-1.

30.

The Declaration is hereby amended by adding the following new Section 6.30 to Article VI thereof:

Window Treatments. Unless otherwise approved in writing by the Board, any portion of any window treatments that are visible from the street on which the dwelling is situated shall be white or off-white in color; provided, any window treatments in use in a dwelling on the Effective Date of this Declaration shall not be subject to this subparagraph but shall be required to comply with the provisions of the Original Declaration, the Original By-Laws, and rules of the Association in effect prior to the Effective Date; upon permanent removal of such existing window treatments, the dwelling shall comply with the terms of this Section. Nothing in this Section is meant to require that any window in any dwelling have window treatments.

31.

The Declaration is hereby amended by adding the following new Section 6.31 to Article VI thereof:

<u>Garages</u>. No garage shall be altered or converted in any way, including conversion into living space, without prior approval of the Architectural Control Committee as provided in Article V of this Declaration; provided, however, that all garage conversions in existence at the time of the adoption of this Declaration, and made in compliance with all of the terms of the Original Declaration, shall not constitute a violation of this requirement. This provision shall be in addition to the terms of Section 6.6 hereof.

Article VII, Section 7.1.4 of the Declaration is hereby amended by deleting that provision in its entirety.

33.

Article VIII, Section 8.2.2 of the Declaration is hereby Amended by adding the phrase "actually incurred" after the words "attorney's fees" in the first sentence thereof, by deleting the phrase "as well as a lien on such Owner's Lot enforceable pursuant to the terms of this Declaration." from the end of the first sentence thereof, and by deleting the entire second sentence thereof, substituting the following language therefor:

with the cost thereof to be added to and become part of the Lot Owner's next chargeable assessment, which shall become a lien against the Lot and shall be collected as provided herein for the collection of assessments.

34.

Article VIII, Section 8.4(a) of the Declaration is hereby amended by the addition of the words "actually incurred" to the last sentence thereof.

35.

The Declaration is hereby Amended by adding the following new Section 8.6 to Article VIII thereof:

Fining and Suspension Procedure. The Board shall not impose a fine or suspend the right to vote or to use the Common Property, unless and until the Association has sent or delivered written notice to the violator as provided in subsection (a) below. However, compliance with this Article VIII, Section 8.6 shall not be required for the following: (i) late charges on delinquent assessments or (ii) suspension of voting rights if an Owner is shown on the Association's records to be more than thirty (30) days delinquent in any payment due the Association, in which case suspension of the right to vote shall be automatic.

- (a) Notice. If any provision of the Declaration or Bylaws or any Association rule is violated, the Board shall send the violator written notice identifying the violation and fine(s) being imposed and advising the violator of the right to request a hearing before the Board to contest the violation or fine(s) or to request reconsideration of the fine(s). Fines may be effective or commence upon the sending of such notice or such later date specified in such notice, notwithstanding the violator's right to request a hearing before the Board to challenge the fine(s). In the event of a continuing violation, each day the violation continues or occurs again constitutes a separate offense, and fines may be imposed on a per diem basis without further notice to the violator.
- (b) <u>Hearing</u>. If a written request for hearing is received from the violator within ten (10) days of the date of the violation notice provided above, then the Board shall schedule and hold in executive session a hearing affording the violator a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing. The Board may establish rules of conduct for such hearing, which may include limits on time and on the number of participants who may be present at one time. Failure to request a timely hearing as provided herein shall result in loss of the right to challenge and request reconsideration of the fines.

Article IX, Section 9.1 of the Declaration is hereby amended by deleting that provision in its entirety and substituting the following therefor:

The covenants and restrictions of this Declaration shall run with and bind the Subdivision perpetually to the extent provided in the Act.

37.

Article IX, Section 9.2.1 of the Declaration is hereby amended by deleting that provision in its entirety.

38.

Article IX, Section 9.2.2 of the Declaration is hereby amended by deleting that provision in its entirety.

39.

Article IX, Section 9.3 of the Declaration is hereby amended by deleting that Section in its entirety and substituting the following language therefor:

Except where a higher vote is required for action under any other provisions of this Declaration, in which case such higher vote shall be necessary to amend such provision, this Declaration may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members of the Association holding sixty-six and two-thirds (66-2/3%) percent of the total eligible vote thereof. Notice of a meeting, if any, at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. No amendment shall be effective until certified by the President and Secretary of the Association and filed in the Fulton County, Georgia land records.

In addition to the above, material amendments to this Declaration must be approved by Eligible Mortgage Holders who represent at least fifty-one (51%) percent of the votes of Lots that are subject to Mortgages held by Eligible Mortgage Holders. Notwithstanding the above, the approval of any proposed amendment by an Eligible Mortgage Holder shall be deemed implied and consented to if the Eligible Mortgage Holder fails to submit a response to any written proposal for an amendment within thirty (30) days after the Eligible Mortgage Holder receives notice of the proposed amendment sent by certified or registered mail, return receipt requested.

Notwithstanding the foregoing, the Board of Directors, without the necessity of a vote from the owners, may amend this Declaration to comply with the Act, any applicable state, city or federal law, including but not limited to, compliance with applicable guidelines of the Federal National Mortgage Association ("Fannie Mae"), the Department of Housing and Urban Development ("HUD") and the Veterans Administration ("VA").

If legal action is not instituted to challenge the validity of this Declaration or any amendment hereto within one (1) year of the recording thereof in the Fulton County, Georgia land records, then such amendment or document shall be presumed to be validly adopted.

Article X, Section 10.1.1 of the Declaration is hereby amended by deleting that provision in its entirety.

41.

Article X, Section 10.1.2 of the Declaration is hereby amended by deleting that provision in its entirety.

42.

Article XI, Section 11.6 of the Declaration is hereby amended by deleting the following language therefrom:

Declarant:

Westminster Homes Limited

P.O. Box 669216 Marietta, GA 30066

And replacing such language with the following:

Association:

Westminster at Crabapple Homeowners Association, Inc.

PMB 195

12460 Crabapple Road

Suite 202

Alpharetta, Georgia 30004

43.

Article XI, Section 11.11 is hereby amended by deleting that provision in its entirety and substituting the following language therefor:

Leasing and Sale of Units.

(a) Leases. In order to protect the equity of the individual Lot Owners at Westminster at Crabapple, to carry out the purpose for which the property was formed by preserving the character of the property as a homogenous residential community of predominantly Owner-occupied homes and by preventing the property from assuming the character of a renter-occupied apartment complex, and to comply with the eligibility requirements for financing in the secondary mortgage market insofar as such criteria provide that the project be substantially Owner-occupied, leasing of Lots shall be governed by the restrictions imposed by this paragraph. Except as provided herein, the leasing of Lots shall be prohibited.

(b) <u>Definitions</u>.

- (i) "Leasing" shall mean the regular, exclusive occupancy of a Lot by any person other than the Owner, for which the Owner receives any consideration or benefit including, but not limited to, a fee, service, gratuity or emolument.
- (ii) "Open leasing status" shall authorize a Lot to be leased at any time. Each Lot at Westminster at Crabapple which is being leased on the date that this Declaration is recorded in the Fulton County, Georgia Records shall have open leasing status until the Lot is sold at which time

the Lot shall automatically be converted to restricted leasing status. Unless so converted to restricted leasing status, the Lot shall be in open leasing status until such time as title is conveyed to any person or entity other than the person or entity holding record title on the date that this Declaration is recorded in the Fulton County, Georgia Records, after which conveyance the Lot shall automatically be converted to restricted leasing status. Open leasing status may also be conferred upon a Lot as provided in subparagraph (c) below.

- (iii) "Restricted leasing status" shall subject a Lot to the restrictions on leasing contained in subparagraph (c) below. All Lots which are not being leased on the date that this Declaration is recorded in the Fulton County, Georgia Records shall be in restricted leasing status unless converted to open leasing status as provided in subparagraph (c) below.
- (c) General. No Owner of a Lot in restricted leasing status may lease his or her Lot if five (5%) percent or more of the Lots in the property are in open leasing status, except as provided in subparagraph (d) below for cases of undue hardship. Any Owner of a Lot in restricted leasing status may apply in writing to the Board of Directors for conversion to open leasing status in accordance with rules and regulations promulgated by the Board of Directors. Upon receipt of such written application, the Lot shall be placed at the end of a waiting list for conversion to open leasing status. At such times as less than five (5%) percent of the Lots are in open leasing status, the Board shall notify the Owner of the Lot at the top of the waiting list of its conversion to open leasing status, and such Owner shall have ninety (90) days within which to lease the Lot or it shall automatically revert to restricted leasing status. Any Lot in open leasing status shall automatically be converted to restricted leasing status if the Lot is not subject to an approved lease for ninety (90) or more consecutive days.
- (d) <u>Undue hardship</u>. Notwithstanding the provisions of subparagraph (c) above, the Board of Directors shall be empowered to allow reasonable leasing of a Lot upon application in accordance with this paragraph to avoid undue hardship, including, but not limited to, (1) where a Lot Owner must relocate his or her residence outside the Atlanta metropolitan area for employment purposes and cannot, within six (6) months from the date that the Lot was placed on the market, sell the Lot for a price no greater than the current appraised market value, after having made reasonable efforts to do so; (2) where the Owner dies and the Lot is being administered by his or her estate; and (3) where the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot, in which case the Lot Owner must reapply every year for renewal of the hardship exception. Those Owners who have complied with this subparagraph (d), have demonstrated that the inability to lease their Lot would result in undue hardship, and have obtained the requisite written approval of the Board may lease their Lots for such duration as the Board reasonably determines is necessary to prevent undue hardship.

Any Owner who believes that he or she must lease his or her Lot to avoid undue hardship shall submit a written application to the Board setting forth the circumstances necessitating the leasing and such other information as the Board may reasonably require. Leasing in the case of undue hardship shall be permitted only upon the Board's written approval of the Owner's application. When an application is approved, the Owner shall provide the Board with the name and phone number of the Lessee and the Owner's address other than at the property and other such information as the Board may reasonably require within ten (10) days after a lease has been signed by both parties.

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and Bylaws, in order to enforce the provisions of this subparagraph. Any transaction which does not comply with this paragraph shall be voidable at the option of the Board of Directors.

- (e) <u>Leasing provisions</u>. Such leasing as is permitted by this paragraph shall be governed by the following provisions:
- (i) General. All leases shall be in writing in a form approved by the Board prior to the effective date of the lease. Attached hereto as exhibit "C" is a form which is deemed acceptable. All leases must be for an initial term of at least twelve (12) months, except with written Board approval. There shall be no subleasing or assignment of leases unless approved in writing by the Board. Lots may be leased only in their entirety; no fraction or portion of any Lot may be leased. No transient tenants shall be accommodated on a Lot. All leases shall be subject to the Declaration, the Bylaws and the Association's rules and regulations. The Owner must provide the Lessee copies of the Declaration, Bylaws, and the rules and regulations, and the lease form shall provide that the Owner has done so.
- (ii) Notice. Within ten (10) days after entering into the lease of a Lot, the Owner shall provide the Board of Directors with the name and phone number of the Lessee and the names of all other people occupying the Lot, the Owner's address other than at the property, and such other information as the Board may reasonably require. Notwithstanding anything in the Declaration to the contrary, failure to provide the above information to the Board within ten (10) days after entering into the lease of a Lot may result in a fine against the Owner for each day that the information is not provided to the Board. Nothing herein shall be construed as giving any party the right to approve or disapprove a proposed Lessee.
- (iii) <u>Liability for assessments, use of common property</u>, and compliance with <u>Declaration</u>, <u>Bylaws</u>, and <u>rules and regulations</u>. Any lease of a Lot shall be deemed to contain the following provisions, whether or not expressly stated therein, and each Owner covenants and agrees that any lease of a Lot shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant, and the Lessee, by occupancy of the Lot, agrees to the applicability of this covenant and incorporation of the following language into the lease:
- (1) Compliance with Declaration, Bylaws, and rules and regulations. Lessee agrees to abide and comply with all provisions of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. Owner agrees to cause all occupants of his or her Lot to comply with the Declaration, Bylaws, and the rules and regulations adopted pursuant thereto and is responsible for all violations and losses caused by such occupants, notwithstanding the fact that such occupants of the Lot are fully liable and may be sanctioned for any violation of the Declaration, Bylaws, and rules and regulations adopted pursuant thereto. If the Lessee or a person living with the Lessee violates the Declaration, Bylaws, or a rule or regulation for which a fine is imposed, such fine may be assessed against the Lessee and/or the Owner; provided, however, if a fine is not paid by the Lessee within the time period set by the Board of Directors, the Owner shall pay the fine upon notice from the Association of the Lessee's failure to do so. Any Lessee charged with a violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is entitled to the same procedure to which an Owner is entitled prior to the imposition of a fine or other sanction.

Any violation of the Declaration, Bylaws, or rules and regulations adopted pursuant thereto is deemed to be a violation of the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the Lessee in accordance with Georgia law. Upon written request of the Board, the Owner is deemed to have delegated and assigned to Westminster at Crabapple Homeowners Association, Inc., acting through the Board, the power and authority to evict the Lessee on behalf of and for the benefit of the Owner, in accordance with the terms hereof, or to require the Owner to do so. In the event the Association proceeds to evict the Lessee, any costs, including attorney's fees and court costs, Associated with the eviction shall be specially assessed

against the Lot and the Owner thereof, such being deemed hereby as an expense which benefits the leased Lot and the Owner thereof.

- (2) <u>Use of Common Property</u>. The Owner transfers and assigns to the Lessee, for the term of the lease, any and all rights and privileges that the Owner has to use the Common Property, including, but not limited to, the use of any and all recreational facilities and other amenities.
- (3) <u>Liability for Assessments</u>. Lessee agrees to be personally obligated for the payment of all annual and special assessments and all other charges against the Owner which become due during the term of the lease and any other period of occupancy by the Lessee or which become due as a consequence of Lessee's activities, including, but not limited to, activities which violate provisions of the Declaration, the Bylaws, or the rules and regulations adopted pursuant thereto. The above provision shall not be construed to release the Owner from any obligation, including the obligation for assessments, for which he or she would otherwise be responsible.

When a Lot Owner who is leasing his or her Lot fails to pay any annual or special assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Lot Owner hereby consents to the assignment of any rent received from the Lessee during the period of delinquency, and, upon request by the Board of Directors, Lessee shall pay to the Association all unpaid annual and special assessments and other charges, as lawfully determined and made payable during the term of the lease and any other period of occupancy by Lessee; provided, however, Lessee need not make such payments to the Association in excess of, or prior to the due dates for monthly rental payments unpaid at the time of the Board's request. All such payments made by Lessee shall reduce, by the same amount, Lessee's obligation to make monthly rental payments to lessor. If Lessee fails to comply with the Board's request to pay assessments or other charges, Lessee shall pay to the Association all late charges, fines, interest, and costs of collection, including, but not limited to, reasonable attorney's fees actually incurred, to the same extent Lessee would be required to make such payments to the Association if Lessee were the Owner of the premises during the term of the agreement and any other period of occupancy by Lessee.

(f) Applicability of this section 11.11. Leases existing on the date which this Declaration is recorded in the Fulton County, Georgia Records shall not be subject to the terms of this paragraph; such leases may continue in accordance with the terms of the original Declaration as it existed prior to the recording date of this Declaration. However, any assignment, extension, renewal, or modification of any lease agreement, including, but not limited to, changes in the terms or duration of occupancy, shall be considered a termination of the old lease and commencement of a new lease which must comply with this paragraph. Any Owner of a Lot which is leased on the effective date of this Declaration shall place on file with the Board of Directors a copy of the lease agreement in effect within thirty (30) days of the date on which this Declaration is recorded in the Fulton County, Georgia Records.

This section 11.11 shall not apply to any leasing transaction entered into by the holder of any first mortgage on a Lot who becomes the Owner of a Lot through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such mortgage.

(g) <u>Sales</u>. A Lot Owner intending to make a transfer or sale of a Lot or any interest in a Lot shall give the Board written notice of such intention within seven (7) days after execution of the transfer or sales documents. The Owner shall furnish the Board, as part of the notice, the name and address of the intended grantee and such other information as the Board may reasonably require. This paragraph shall not be construed to create a right of first refusal in the Association or in any third party.

Within seven (7) days after receiving title to a Lot, the purchaser of the Lot shall give the Board written notice of his or her ownership of the Lot. Upon failure of a Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Lot and Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

44.

The Declaration is hereby amended by adding the following new Section 11.17 to Article XI thereof:

INSURANCE.

- (a) <u>Hazard Insurance on Common Property and Lots</u>. The Association's Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property.
- (b) Association Liability and Directors' and Officers' Liability Insurance. The Board shall obtain a public liability policy applicable to the Common Property covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents in their capacities as such, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least one million (\$1,000,000.00) dollars.
- (c) <u>Premiums and Deductible on Association Policies</u>. Premiums for all insurance obtained by the Association shall be a Common Expense of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.
- (d) <u>Policy Terms</u>. All such insurance coverage obtained by the Board shall be written in the name of the Association, as trustee, for the respective benefited parties, as further identified in subparagraph (ii) below. Such insurance shall be governed by the provisions hereinafter set forth:
- (i) All policies shall be written with a company licensed to do business in Georgia.
- (ii) All policies on the Common Property shall be for the benefit of the Association and its members. Any policies covering improvements on Lots shall be for the benefit of Lot Owners and their Mortgagees, as their interests may appear.
- (iii) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
- (iv) In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.
- (v) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the county where the Property is located.
- (vi) The Board shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
 - a waiver of subrogation by the insurer as to any claims against the Board, the Association's manager, the Owners and their respective tenants, servants, agents, and guests;

- a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
- a provision that no policy may be canceled, invalidated, suspended or subjected to nonrenewal on account of any one or more individual Owners;
- (4) a provision that no policy may be canceled, invalidated, suspended, or subjected to nonrenewal on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;
- (5) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
- (6) that no policy may be canceled or substantially modified or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association.
- Additional Association Insurance. In addition to the other insurance required by this Paragraph, the Board shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds or dishonesty insurance. The amount of fidelity coverage or dishonesty insurance shall be determined in the directors' best business judgment, but if reasonably available, shall not be less than three (3) months assessments plus a reasonable amount to cover all or a reasonable portion of reserve funds in the custody of the Association at any time during the term of the bond; provided, however, fidelity coverage herein required may be reduced based on financial controls which take one or more of the following forms: (a) the Association or management company, if any, maintains a separate bank account for the working account and the reserve account, each with appropriate access controls and the bank in which funds are deposited sends copies of the monthly bank statements directly to the Association; (b) the management company, if any, maintains separate records and bank accounts for each association that uses its services and the management company does not have the authority to draw checks on, or to transfer funds from, the Association's reserve account; or (c) two Board members must sign any checks written on the reserve account. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled, substantially modified, or subjected to nonrenewal without at least thirty (30) days' prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of The Mortgage Corporation or the Federal National Mortgage Association.
- (f) <u>Insurance Deductibles</u>. In the event of an insured loss under the Association's casualty policy, any required deductible shall be considered a maintenance expense to be paid by the Person or Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Lot or a Lot and the Common Property, the cost of the deductible may be apportioned and assessed equitably by the Board among the parties suffering loss in accordance with the total cost of repair, or otherwise as the Board reasonably determines equitable, unless the insurance policy provides that the deductible will apply to each Lot separately. If any Owner fails to pay the deductible when required hereunder, then the Association can pay the deductible and assess the cost to the Owner or Owners; provided, however, no Owner shall be assigned more than one thousand (\$1,000.00) dollars as the cost of the deductible for any one occurrence.
- (g) Payment of Claims to Delinquent Owners. Notwithstanding anything to the contrary herein, in the event of an insured loss under the Association's master hazard insurance policy for which the Association receives from the insurer payment for a loss sustained by an Owner who is

delinquent in the payment of assessments owed to the Association, then the Association may retain and apply such proceeds to the delinquency. Any surplus remaining after application of the proceeds to any delinquency shall be paid by the Association to the affected Owner.

45.

The Declaration is hereby amended by adding the following new Section 11.18 to Article XI thereof:

Dispute Resolution. Any Lot Owner or Occupant must give written notice to the Board requesting a hearing with the Board and attend such hearing to discuss amicable resolution of any dispute before that Owner or Occupant files any lawsuit against the Association, the Board, any officer or director, or the property manager of the Association. The Owner or Occupant shall, in such notice and at the hearing, make a good faith effort to explain the grievance to the Board and resolve the dispute in an amicable fashion, and shall give the Board a reasonable opportunity to address the Owner's or Occupant's grievance before filing suit. Upon receiving a request for a hearing, the Board shall give notice of the date, time and place of the hearing to the person requesting the hearing. The Board shall schedule this hearing for a date not less than seven (7) nor more than twenty-one (21) days from the date of receipt of the notice of hearing from the person requesting the hearing.

46.

The Declaration is hereby amended by adding the following new Section 11.19 to Article XI thereof:

Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety at the Subdivision; however, each Owner, for himself or herself and his or her tenants, guests, licensees, and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security at the Subdivision. It shall be the responsibility of each Owner to protect his or her person and property and all responsibility to provide security shall lie solely with each Lot Owner.

The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned officers of the Westminster at Crabapple Subdivision Homeowners Association, Inc. hereby certify the requisite Owners have approved these amendments and any required notices have been duly given.

This $\frac{3^{PD}}{\text{day of}}$ day of $\frac{\text{June}}{\text{June}}$, 2000.

ASSOCIATION:

WESTMINSTER AT CRABAPPLE HOMEOWNERS ASSOCIATION, INC.

[CORPORATE SEAL]

Sworn to and subscribed this 3rd day of June, 2000, in the presence of:

Notary Public, Fulton County, Georgia My Commission Expires Aug. 19, 2002

[NOTARY SEAL]

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Deed Book 29185 Pg 491 Juanita Hicks Clerk of Superior Court Fulton County, Georgia

