

DECLARATION OF CONDOMINIUM
OF
VILLAS OF OPELIKA, A CONDOMINIUM

Lee County, Alabama

THIS DECLARATION is made on this 12 day of May, 2005, by G&G Investment Partners, LLC, hereinafter referred to as the "Declarant".

WITNESSETH

WHEREAS, the Declarant is the owner in fee simple of all of that property located in the City of Opelika, Lee County, Alabama, which is more particularly described in Exhibit "A" attached hereto; and

WHEREAS, the Declarant desires to submit the property described in Exhibit "A" hereto to the provisions of the Alabama Uniform Condominium Act of 1991 pursuant to the terms and provisions of this Declaration;

NOW, THEREFORE, the Declarant does hereby submit the property described in Exhibit "A", hereto attached and incorporated herein by reference thereto, together with all of the improvements now or hereafter located thereon, to the provisions of the Alabama Uniform Condominium Act of 1991. From and after the date on which this Declaration together with the Survey described in Article I hereof, are recorded with the Judge of Probate of Lee County, Alabama, the property described in Exhibit "A" hereto, and all of the improvements located thereon, and any easements appurtenant thereto, shall be owned, held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions and restrictions of this Declaration and of the aforesaid Alabama Uniform Condominium Act of 1991.

ARTICLE I
DEFINITIONS

Unless the context requires otherwise, the terms defined in the Act and not defined differently in this Declaration shall have the same meaning for purposes of this Declaration as are ascribed to them in the Act. In addition, as used in this Declaration, the Articles of Incorporation, the Bylaws and the other condominium instruments, the following terms shall have the meanings ascribed to them hereinbelow, all of such definitions being cumulative of those set forth elsewhere in this Declaration.

"Act" shall mean the Alabama Uniform Condominium Act of 1991, Annotated Sections 35-8A-101 through 35-8A-417, as the same may be amended from time to time.

"Articles of Incorporation" shall mean the Articles of Incorporation of the Association, as

the same now exist or may be hereafter amended.

"Association" shall mean the Villas of Opelika Homeowners Association, Inc., an Alabama nonprofit membership corporation formed for the purposes of exercising the powers of the Association under this Declaration, the Articles of Incorporation, the Bylaws, the Act, and the Alabama Nonprofit Corporation Code.

"Board of Directors" shall mean the Board of Directors of the Association, the members of which shall be appointed and elected from time to time as provided in this Declaration, the Articles of Incorporation, the Bylaws, and the Act. The Board of Directors shall be the governing body of the Association.

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

"Common Elements" shall mean all portions of the condominium except units and includes limited common elements.

"Dwelling" shall mean any structure located on a unit, which structure is designed and intended for single-family, residential occupancy, and with respect to which a certificate of occupancy shall have been issued by the governmental authority having jurisdiction over such matters. A Dwelling shall include, without limitation, the structure in which the main living quarters are located, any covered garage, covered walkway, carport or patio attached to such structure, and any such portion of the heating and air-conditioning systems (including compressors, pipes, ducts, conduits, wires and the like) serving such structure, regardless of whether such portions of the heating and air conditioning systems are located within or without the walls of such structure.

"First mortgage" shall mean any mortgage on a condominium unit which gives to the holder thereof of a first and superior lien and interest mortgage on such condominium unit.

"First mortgagee" shall mean the holder of a first mortgage on any condominium unit or condominium units.

"Foundation Planting Area" shall mean the portion of any Unit Grounds covering the area between (i) the points at which the exterior wall of the Dwelling located on the unit of which such Unit Grounds are a part meet the ground and (ii) an imaginary line running parallel to such exterior walls which completely surrounds the Dwelling (except for concrete or asphalt surfaces such as driveways or sidewalks) at a uniform distance of three (3) feet from such points. To the extent that patios, covered walkways and other similar improvements constituting part of a Dwelling do not have exterior walls, then the points at which the exterior walls of any unit owner's Dwelling meet the ground, for purposes of determining the portion of the Foundation Planting Area immediately adjacent to such patio, covered walkway or other improvement, shall be deemed to be the points at which the concrete, wood or other surface of such patio, walkway

or other similar improvement meet the ground. Unless expressly indicated to the contrary, the Foundation Planting Area shall be included within the term "Unit Grounds", as that term is used in the condominium instruments and in any rules and regulations now or hereafter promulgated by the Board of Directors.

"Property" shall mean the entirety of the property submitted to the Act by this Declaration or by any amendment thereto.

"Survey" shall mean that plat of survey entitled, "Condominium Plat of Parcel C-1, The Villas of Opelika, certified by James L. McCrory, Alabama Registered Land Surveyor No. 12493.

ARTICLE II **NAME**

The name of the condominium is

THE VILLAS OF OPELIKA, A CONDOMINIUM.

ARTICLE III **SUBMITTED PROPERTY**

The property which is submitted to this Declaration is described in Exhibit "A", which is attached to this instrument.

Declarant does hereby specifically reserve the right to amend this Declaration to annex additional residential property and common areas (hereinafter called "Additional Property") to this declaration within five (5) years without the consent of members of the owners' association. After this five year period, Declarant may annex additional residential property and common areas with the consent of two-thirds (2/3) of the said members. The Additional Property is described in Exhibit "B", attached hereto.

ARTICLE IV **UNITS**

Each unit consists of all of the land located within the boundary lines of such units (as described in Section 4.1 hereof) and all of the improvements which may be constructed on such land in accordance with the terms and conditions of this Declaration. Each unit, together with its undivided interest in the common elements, shall for all purposes constitute a separate parcel of real property, which may be owned, held, transferred, sold, conveyed, used, occupied, mortgaged or otherwise encumbered in the same manner as any other separate parcel of real property, subject to the terms, provisions and restrictions of the Declaration and the Act. The undivided interest in the common elements appertaining to each unit, shall not be separated from such unit and shall be deemed to be transferred, conveyed and encumbered with such unit even if such

interest is not stated or referred to in the document or instrument effecting such transfer, conveyance or encumbrance. Each unit owner shall be entitled to the exclusive ownership and possession of the unit or units owned by him, subject to the terms, provisions and restrictions of this Declaration and the Act. Each unit shall include all of the space and improvements with the boundaries thereof.

4.1 BOUNDARIES: The vertical (lateral) boundaries of each unit are the perpendicular projections of the boundary lines of such unit which are the inside of the perimeter walls of each unit, and, which boundary lines are shown and depicted on the Survey. The upper and lower horizontal boundaries for each unit are the top of the ceiling and the bottom of the floor of each unit, which are also depicted on the survey.

4.2 RELOCATION OF BOUNDARIES BETWEEN UNITS: The boundaries between adjoining units may be relocated from time to time, provided that any such relocation is made in accordance with the procedures and provisions of Code Section 35-8A-212 of the Act.

ARTICLE V LIMITED COMMON ELEMENTS

5.1 EXISTING LIMITED COMMON ELEMENTS. All common elements identified as being reserved for the exclusive use of a particular unit, including, without limitation, the sewer and water pipes, ducts, conduits, electrical connections, doors, windows, ventilating shafts, the parking space assigned to each unit, and the heating and air conditioning equipment and apparatus serving only one such residence unit, are hereby permanently reserved for such exclusive use. Each unit owner whose unit has direct access from the interior thereof to a patio, deck, or balcony shall have an exclusive easement for the use thereof. The reservations herein set forth and the easements hereby created shall not be enlarged, diminished or varied by any custom, practice or usage that may ensure hereafter, and shall be deemed to be conveyed or transferred with the unit to which it is assigned even though not specifically referred to in the deed or other instrument conveying or transferring title to such unit or creating a security interest in such unit. There shall be two (2) parking spaces per unit, and they shall be identified as belonging to a specific unit.

5.2 REASSIGNMENT OF LIMITED COMMON ELEMENTS. The limited common elements, if any, within the Condominium may be reassigned at any time, and from time to time, provided that any and all such reassignment shall be made in accordance with the procedures and provisions of subsection (b) of Code Section 35-8A-208 of the Act.

5.3 LIMITED COMMON ELEMENTS ON ADDITIONAL PROPERTY.

(a) In the event that any portion of the Additional Property is added to the Condominium pursuant to the provisions of Article III hereof, and in the event that such Additional Property contains any limited common elements, such limited common elements and the units to which the same are assigned shall be described in the amendment to this Declaration

which shall be executed and recorded in the Probate Office of Lee County, Alabama, for the purpose of adding such portion of the Additional Property to the Condominium.

(b) Portions of the Additional Property which shall be added to the Condominium pursuant to the provisions of Article III hereof may contain common elements which may be assigned as limited common elements after the date such portions of the Additional Property are so added to the Condominium. Any amendment to this Declaration which adds any portion of the Additional Property to the Condominium shall contain a description of any portions of the common elements located thereon which may be assigned subsequently as limited common elements, together with a statement that such portions of the common elements may be so assigned. Any such assignment of a portion of the common elements as a limited common element shall be made by an amendment to the Declaration which shall be approved by a majority of the Board of Directors and which shall be executed on behalf of the Association by the President or Vice President thereof and by the owner(s) of the unit(s) to which such limited common element is being thereby assigned. Any such assignment becomes effective when the amendment to the Declaration, executed as aforesaid, is recorded in the Probate Office of Lee County, Alabama.

(c) In furtherance of the provision of Section 5.3, the Declarant hereby reserves the right to create limited common elements within any portion of the Additional Property and to designate common elements therein which subsequently may be assigned as limited common elements. Except as specifically set forth in this Section 5.3, there shall be no limitations on the right herein preserved unto the Declarant.

ARTICLE VI

ALLOCATION OF UNDIVIDED INTEREST IN THE COMMON ELEMENTS, VOTES IN THE ASSOCIATION, AND LIABILITY FOR COMMON EXPENSES

6.1 ALLOCATION OF UNDIVIDED INTEREST IN THE COMMON ELEMENTS.
Each condominium unit shall be allocated an equal undivided interest in the common elements.

6.2 ALLOCATION OF VOTES IN THE ASSOCIATION. Each condominium unit shall be allocated one (1) vote in the Association.

6.3 ALLOCATION OF SHARE OF LIABILITY FOR COMMON EXPENSES.
Each condominium unit shall be allocated an equal share of the liability for common expenses.

6.4 ALLOCATION OF SHARE OF LIABILITY FOR COMMON EXPENSES
DURING CONSTRUCTION PHASES. Anything in Section 6.3, ARTICLE XI, or elsewhere in this Declaration or the Bylaws not withstanding, until twenty-eight (28) units are sold, each unit shall be charged a flat monthly assessment of \$95.00. Any shortfall will be paid by the developer, and any surplus carried forward by the Association. When twenty-eight (28) units are sold, the amount of the monthly assessment may be increased or decreased by the Association, and each unit sold shall pay its pro rata share of expenses as set out in Section 6.3 and elsewhere

in this Declaration.

ARTICLE VII
POWERS AND DUTIES OF THE ASSOCIATION
AND BOARD OF DIRECTORS

7.1 **POWERS.** The powers of the Association and the Board of Directors shall be all of those powers conferred upon the Association and the Board of Directors by the Act, the Alabama Nonprofit Corporation Code, this Declaration, the Articles of Incorporation, the Bylaws, and the other condominium instruments, together with such other powers as the Association and the Board of Directors may reasonably require in order to perform and discharge all of their duties and responsibilities, and to carry out the purposes of the Association.

7.2 **RULES AND REGULATIONS.**

(a) Without limiting the generality of the provisions of Section 7.1 hereof, the Board of Directors shall have the plenary power and authority to adopt, make and amend reasonable rules and regulations in regard to the use and occupancy of the units, the limited common elements (if any), the common elements (including, without limitation, the garage and parking areas). Such rules and regulations adopted by the Board of Directors may include, without limitation, the fixing of fees or other charges for the use of any of the common elements, and the establishing of rules and regulations regarding to parking of motor vehicles on the common elements and on the units, and the use and enjoyment of the units, the limited common elements (if any), and the common elements, all of which rules and regulations shall supplement the application provisions of Article VIII of this Declaration. As part of said power and authority, the Board of Directors may suspend the right of any unit owner, guest, tenant, or other person whatsoever to use the common elements for failure to abide by any rule or regulation adopted by the Board of Directors.

(b) It shall be the duty of the Board of Directors to furnish written copies of all rules and regulations as shall be adopted, made and amended by it pursuant to the exercise of its power and authority herein stated to all of the unit owners prior to the time that such rules and regulations shall go into effect. All of the rules and regulations as shall be adopted, made or amended by the Board of Directors and furnished in writing to the unit owners shall be binding upon the unit owners and their lessees, and on the families, guests and invites thereof, in any event, the failure of any such persons to comply with or abide by any such rule or regulation shall be grounds for an action by the Association for damages, for injunctive relief, or for the imposition and assessment of fines, as provided in Article XIV hereof, and for all or any combination of the foregoing.

7.3 **PROFESSIONAL MANAGEMENT.**

(a) The Board of Directors may employ a professional management firm to manage the operation and affairs of the Condominium and the Association. Such management

firm shall be employed pursuant to a written management agreement which shall be executed on behalf of the Association by no less than a majority of the members of the Board of Directors. All such management agreements shall be terminable by the Association or the professional management firm without cause, and without a termination fee, upon ninety (90) days notice, and the term thereof may not exceed one (1) year, renewable by agreement of the parties for successive one-year periods.

(b) During the term of such management agreement, such management firm shall be the agent of the Board of Directors and of the Association. To the extent permitted by law, the Board of Directors shall be authorized to delegate to such management firm such of the duties and powers of the Association, and of its Board of Directors and officers, as the Board of Directors shall determine, in which event such management firm shall be empowered and authorized to exercise such powers and duties on behalf of, and in the name of, the Association.

(c) It shall be expressly permissible for the Declarant, or any firm affiliated with the Declarant (or with any person or entity comprising the Declarant) to be employed as the professional management firm pursuant to the provisions of this Section 7.3.

7.4 ENFORCEMENT OF DIRECTORS' DUTIES. In the event that the Board of Directors shall fail to perform any duty or duties which under the terms and provisions of this Declaration, the Articles of Incorporation, the Bylaws, or the Act are to be performed by it, any unit owner or first mortgagee who is aggrieved by such failure shall have the right to proceed in equity to compel the Board of Directors to perform such duty or duties. In no event, however, shall any member or members of the Board of Directors have any liability to any unit owner or first mortgagee for any failure by the Board of Directors to perform any such duty or duties, except to the extent specifically provided in the Act.

ARTICLE VIII RESTRICTIONS

In order to provide for the maximum enjoyment of the Property by all of the residents thereof and to provide for the protection of the value of the condominium units, the use of the Property and all of the condominium units located thereon shall be restricted to, and shall be only in accordance with, the following provisions:

8.1 SINGLE-FAMILY USE. All condominium units shall be restricted exclusively to single-family residential use. The term, "single-family", shall include one or more related or unrelated adults, as well as the children of any such adults, but in any event not more than two unrelated adults. No condominium unit or any common element, or any portion thereof, shall at any time be used for any commercial, business or professional purpose. Nothing set forth in this Section 8.1 shall prohibit the Declarant from conducting such sales and promotional activities on the Property as it shall determine or using any condominium units owned by it in connection therewith, nor shall anything set forth in this Section 8.1 be construed as prohibiting the use of condominium units for residential rental purposes.

8.2 PROHIBITED ACTIVITIES. No noxious or offensive activity shall be carried on within the boundaries of any unit, or upon any limited common element or common element. Each unit owner, his family, tenants, guests and invites, shall refrain from any act or use of his unit, or the limited common elements assigned to his unit (if any), or any portion of the common elements, which could reasonably cause embarrassment, discomfort, annoyance, or nuisance to any other resident or residents of the Property.

8.3 NUISANCES. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Property so as to render the same unsanitary, unsightly or offensive. No nuisance shall be permitted to exist upon any portion of the Property. Without limiting the generality of any of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on the Property, or any portion thereof.

8.4 MOTOR VEHICLES.

(a) Except as the Board of Directors may otherwise determine through the adoption of differing rules and regulations, as hereinbelow provided, only passenger automobiles and trucks having a load-bearing capacity of no more than three-quarters (3/4) of a ton, and being in operating condition with their current and effective license tags affixed thereto, shall be parked upon the common elements or upon any unit, and non-automobiles, specifically including, but not limited to, boats, trailers, horse trailers, tractors, motor homes, campers and other recreational vehicles, shall not be stored or parked upon the common elements or upon any unit so that they are visible from the common elements or from any other unit. Vehicles permitted to be parked on the Property shall be parked only upon such areas of the Property as the Board of Directors shall designate; provided that it shall be permissible to park such permitted vehicles on those areas of common elements striped-off for parking, as well as on the driveways constituting part of any unit and in the garages or carports constituting part of any Dwelling owned by the unit owner who, or whose lessee (or the family members, guests or invites of either of them), desires to park such permitted vehicle or vehicles, subject, however, to any other unit owner's easement rights with respect to the use of such driveway, as set forth in Section 21.1 hereinbelow.

(b) Notwithstanding the foregoing provisions of this Section 8.4, the Board of Directors may, but shall be under no obligation to, adopt rules and regulations which may permit to be parked upon the common elements or upon the units (or both) vehicles which are prohibited from being parked upon the common elements or upon the units under the foregoing provisions of this Section 8.4, provided that any such rules or regulations shall impose restrictions and limitations upon the parking of such otherwise prohibited vehicles which the Board of Directors shall determine will prevent the parking of the same from being an eyesore to the residents of the Property.

8.5 ANIMALS.

(a) Except as otherwise provided hereinbelow, no animals shall be permitted upon the Property; provided, however, each unit owner shall have the right to keep a reasonable number of animals of a type generally recognized as household pets, provided, further, that no one of such animals shall exceed 22 pounds in weight.

(b) All animals which shall be kept upon the Property shall be kept and maintained as household pets (and not for any commercial purpose), and may not be kept and maintained upon the Property if they shall create an unreasonable amount of noise, or create a nuisance to any residents of the Property. All such household pets shall be on a leash when outside the Dwelling. No pet shall be permitted to leave its droppings on the streets or any portion of the common elements, and the owner of such pet shall promptly remove the same.

(c) Upon the written request of any unit owner, the Board of Directors shall determine whether a particular animal and its keeping is in conformity to the foregoing requirements. Any such determination by the Board of Directors shall be conclusive. If it shall be so determined that such animal is not of a type generally recognized as a household pet, or is being kept in a manner which does not conform to the foregoing requirements, or is creating an unreasonable amount of noise or constituting a nuisance to any resident of the Property, then the owner of the unit on which such animal is being kept shall remove such animal from the Property promptly upon being ordered to do so by the Board of Directors. Likewise, if the Board of Directors shall determine that any unit owner is keeping an unreasonably large number of animals upon the Property (even if all such animals are of a type generally recognized as household pets), the owner of the unit on which such animals are being kept shall promptly remove from the Property the number of animals which the Board of Directors orders to be removed; provided, however, that so long as all such animals are of a type and demeanor otherwise permitted to be kept on the Property, the unit owner to whom the Board of Directors' order is directed shall determine which of said animals are to be removed from the Property.

8.6 **SIGNS.** Except in connection with the sales activities of the Declarant, no sign of any kind or character shall be mounted, erected or displayed upon any portion of the Property without the express written permission of the Board of Directors. The restriction herein stated shall include the prohibition of the placement of any sign on any limited common element or common element, the placement of any sign within a Dwelling or on the Unit Grounds of any unit at a location from which the same shall be visible from the outside, and the placement of any sign in or upon any motor vehicle while the same is upon the property. Notwithstanding anything to the contrary contained in this Section 8.7, any unit owner shall be entitled to place on the Unit Grounds of each unit owned by him one "For Sale" sign or one "For Rent" sign shall either have been specifically approved by the Board of Directors in writing or shall fully comply with such rules and regulations with respect to signs as the Board of Directors shall have established and as may then be in effect.

8.7 **STORAGE.** No portion of any unit or any limited element or common elements open to general view shall be used for storage of any kind. Furthermore, nothing shall be done

or kept within the boundaries of any unit or any limited common elements or common elements which will increase the rate of insurance for the Property. No unit owner shall permit the storage of unusual or unnecessary amounts of flammable liquids, explosives, corrosives, poisons or lethal chemicals, or any substance within the boundaries of his unit or upon any limited common elements appurtenant to his unit or on the common elements, which would result in the cancellation of insurance on any unit or any part of the limited common elements (if any) or common elements or which would be in violation of any law.

8.8 TEMPORARY STRUCTURES. Subject to the right of the Declarant to promote the sale of units within the Condominium, no structure of a temporary character, including, without limitation, any trailer, tent, shack, garage or other out-building, shall be permitted on the Property at any time, whether temporary or permanently, except with the prior written consent of the Board of Directors; provided, however, that temporary structures may be erected for use in connection with the repair or rebuilding of the Property or any portion thereof, or in connection with the initial sales of units within the Condominium.

8.9 GARDENING. Except within individual units, no planting, transplanting or gardening shall be done.

8.10 ANTENNAS. Unless contrary to law, no exterior antennas, aerials or satellite dishes shall be constructed or installed on the Property without the prior written consent of the Board of Directors.

8.11 CLOTHESLINES. No outside clotheslines or other facilities for drying or airing clothes shall be erected, placed or maintained on any portion of the Property, nor shall any clothing, rugs or any other item be hung on any railing or fence located on the Property.

8.12 UNIT GROUNDS. From and after the date on which a certificate of occupancy is issued for the Dwelling which is initially constructed on any unit, no structure or other improvement shall be constructed on such unit, nor shall any fixture be attached to any part of such unit, nor shall any equipment, materials or other personal property be stored, placed or maintained on any portion of such unit so that such fixture, equipment, material or other personal property shall be visible from the street, from the common elements or from any other unit, without the prior written consent of the Board of Directors.

ARTICLE IX
REPAIR AND MAINTENANCE

The repair and maintenance of the Property shall be performed in accordance with the following terms and conditions:

9.1 UNITS. Each unit owner shall be solely responsible for the maintenance, repair, renovation, restoration and replacement of all portions of his Unit, regardless of location to boundaries, including without limitation, the interior, the electrical and plumbing systems serving only his Unit, the exterior doors and frame, glass surfaces, window frames, window screens, and the heating and air-conditioning systems serving his Unit. All such maintenance, repair, renovation, restoration and replacement work which is the responsibility of each unit owner under the provisions of this Section 9.1 shall be performed by such unit owner at his sole cost and expense, and in such a manner so as to cause as little disturbance to the residents of the other units as is reasonably possible.

9.2 UNIT EXTERIORS AND GROUNDS. In order to enhance the overall appearance of the Property and to ensure a uniform standard of maintenance of the common elements and all units, and notwithstanding anything to the contrary contained in the Act (including, without limitation, Section 35-8A-307 of the Act), this Declaration, or the Articles or Bylaws of the Association, the Association shall be responsible for the maintenance, repair and upkeep of the roof and exterior of each unit within the Condominium, specifically excluding, however, those things the maintenance and upkeep of which are the responsibility of the unit owners pursuant to Section 9.1 hereinabove. The costs and expenses incurred by the Association in performing its obligations under this Section 9.2 shall be common expenses (subject to the contrary provisions of Section 9.6 hereinbelow).

9.3 LIMITED COMMON ELEMENTS. Except as may be provided in any subsequent amendment to this Declaration, the Association shall be responsible for the maintenance, repair, renovation, restoration and replacement of any limited common elements as may hereafter be located on the Property or any portion thereof (subject to the contrary provisions of Section 9.6 hereinbelow), provided however, the expenses associated therewith shall be assessed as set out in Section 12.5.

9.4 COMMON ELEMENTS. The Association shall be responsible for the maintenance, repair, renovation, restoration and replacement of all of the common elements, including, without limitation, all portions of the sewage disposal system being constructed as part of the Condominium which do not constitute part of any unit. If the Association fails to maintain or to complete the repair of the aforesaid portion of the sewage disposal system, or of any streets or roads which the Association is responsible for sustaining and repairing, the governing authority of the City of Opelika, Alabama, may make the necessary repairs and/or assume maintenance of the aforesaid portions of the sewage disposal system or street or roads (or all of the foregoing). The Association shall reimburse the City of Opelika, Alabama, for the costs of any such repairs and for such maintenance as is performed by the City of Opelika,

Alabama, and the cost of such repairs and/or maintenance shall be assessed by the Association against the unit owners and shall constitute a lien against each condominium unit. The lien shall be enforceable by suit and/or foreclosure by the Association, by the City of Opelika, Alabama, or by the owner of one or more condominium unit.

9.5 PROHIBITED CHANGES. No unit owner shall change in any respect the exterior appearance of his Dwelling, or of any other portion of the Property, including any of the limited common elements (if any) assigned to his unit, without having first obtained the written consent of the Board of Directors. Without limiting the generality of the immediately preceding sentence, no awnings, shades, storm door or screens shall be attached to, hung or used on the exterior of any window or door of any Dwelling or on the exterior of any other permitted improvement located on any unit, nor shall any foil or other reflective material be used on any windows for sunscreens, blinds, shades or any other purpose, without the prior written consent of the Board of Directors or any architectural committee appointed by the Board of Directors. Additionally, the design, type, location, size, intensity and color of all exterior lights shall be subject to the control of the Board of Directors.

9.6 MAINTENANCE REQUIRED BY UNIT OWNERS. In the event the Board of Directors shall determine the need for any maintenance or repair work to be performed by the Association as provided for in Sections 9.2, 9.3 and 9.4 hereof is caused through the willful or negligent act of a unit owner, his lessee, or any member of his or his lessee's family, guests, or invites, the cost of performing such maintenance or repair work shall be specially assessed against, and shall be paid by, such unit owner. Such costs shall be added to and become a part of the assessment to which such unit owner is subject, as provided in Article XII hereof, and unless it is determined otherwise by the Board of Directors, shall be due and payable at the time the next installment of such assessment shall be due and payable.

ARTICLE X SURVEY AND PLANS

Simultaneously with the recording of this Declaration with the Judge of Probate of Lee County, Alabama, the survey is being filed in Condominium Plat Book 3, at Page 134, Lee County, Alabama. The Survey is hereby incorporated herein by reference thereto as fully as if the same were set forth in the entirety herein.

ARTICLE XI EXPANSION OF CONDOMINIUM

11.1 OPTION TO EXPAND. The Declarant does hereby explicitly reserve an option or options to expand the Condominium so as to add all or any part of the Additional Property to the Condominium.

11.2 EXPIRATION OF OPTION. The option herein reserved unto the Declarant shall be exercisable at any time and from time to time on or before the fifth (5th) anniversary of the

date on which this Declaration is recorded in the Probate Office of Lee County, Alabama (the "Option Expiration Date"). Unless all the Additional Property shall have been added to the Condominium by the Option Expiration Date, the option herein reserved unto the Declarant shall expire at 5:00 p.m. on the Option Expiration Date. Notwithstanding the foregoing, however, the option herein reserved unto the Declarant may be extended if (i) the unit owners of units to which at least two-thirds of the votes in the Association appertain, exclusive of any vote or votes appurtenant to any unit or units then owned by the Declarant, together with (ii) the first mortgagees holding first mortgages on at least two-thirds of the condominium units, shall consent to such extension of such option within one year prior to the date upon which such option would otherwise have expired.

11.3 LIMITATIONS ON OPTION. Except as specifically set forth in this Declaration, there shall be no limitations on the option herein reserved unto the Declarant.

11.4 EXERCISE OF OPTION. The option herein reserved unto the Declarant may be exercised so as to add all or any portion or portions of the Additional Property to the Condominium at different times, and in any order or sequence. There shall be no limitations on the boundaries of the portion or portions of the Additional Property which may be added to the Condominium by the exercise of the said option, or the order in which portions of the Additional Property may be added to the Condominium. The exercise of said option as to any portion of the Additional Property shall not bar the further exercise of the said option as to any other portion or portions of the Additional Property.

11.5 MANNER OF EXERCISE.

(a) The option herein reserved unto the Declarant shall be exercisable by the recording with the Judge of Probate of Lee County, Alabama, of (i) an amendment to this Declaration, duly executed in behalf of the Declarant, and on behalf of all other owners and mortgagees of and on the portion of the Additional Property being thereby added to the Condominium and (ii) a plat or plats of survey of the portion of the Additional Property being thereby added to the Condominium, which plat or plats shall conform to the requirements of the Alabama Uniform Condominium Act of 1991.

(b) Each amendment which shall be filed by the Declarant with the Probate Judge of Lee County, Alabama, pursuant to this Article XI, shall contain a legal description by metes and bounds of the portion of the Additional Property (taken as a whole) being thereby added to the Condominium.

11.6 MAXIMUM NUMBER OF UNITS. The maximum number of units that may be created on the Additional Property is the maximum number permitted by the municipal zoning law.

11.7 NO OBLIGATION. Notwithstanding anything contained elsewhere in this Declaration which may be construed to the contrary, the Declarant shall be under no obligation to exercise the option herein reserved unto it so as to add all or any portion of the Additional

Property to the Condominium. Prior to being added to the Condominium pursuant to the exercise of the option herein reserved unto the Declarant, no portion of the Additional Property shall be subject to any of the terms, provisions and restrictions of this Declaration, and all portions of the Additional Property may be conveyed, pledged, leased and encumbered totally free of the terms, provisions and restrictions of this Declaration subject only to any easement rights granted by the Declarant to the Association, the unit owners, their family members, guests and invitees, and the unit owners' lessees and their family members, guests and invitees as more specifically identified on Exhibit "A" hereto.

11.8 OTHER ASPECTS OF EXPANSION OPTION.

- (a) Residential Use Only. All units which may hereafter be created on the Additional Property, or any portion thereof, shall be restricted exclusively to single-family residential use, in accordance with Section 8.1 of this Declaration.
- (b) Compatibility of Structures. No assurances are made by the Declarant with respect to the compatibility of any structures which have been or may be erected on any portion of the Additional Property added to the Condominium, which structures located on the Phase I Property, in terms of quality of construction, the principal materials to be used, and architectural style, or any such respect.
- (c) Location of Improvements. No assurances are made by the Declarant with respect to the location of any or all other improvements that may be made on any portion of the Additional Property added to the Condominium.
- (d) Additional Units. No assurances are made by the Declarant with regard to whether any units (and the Dwellings constructed thereon) created on any portion of the Additional Property added to the Condominium will be substantially identical to the units on the Phase I Property (and the Dwellings constructed thereon) or with regard to the existence or nonexistence of any limitations as to what types of units (or Dwellings) may be created on any portion of the Additional Property added to the Condominium.

ARTICLE XII ASSESSMENTS

Assessments against the unit owners shall be made for the purpose of raising funds to pay the common expenses of the Condominium, and shall be governed by the following provisions:

- 12.1 LIABILITY. Each and every unit owner shall be liable to the Association for all sums as are lawfully assessed against him or his condominium unit or condominium units by the Association in accordance with the terms and provisions of this Declaration, and the Articles of Incorporation and the Bylaws. In addition to exercising the remedies provided for herein, the Association may enforce such liability by an action at law to recover all amounts assessed against each unit owner in accordance with the provisions of this Article XII, any other Article of

this Declaration, the Articles of Incorporation, the Bylaws, or any rule or regulation adopted by the Board of Directors.

12.2 **PURPOSE.** Assessments shall be levied against the unit owners and the condominium units to defray the common expenses of the Condominium. The common expenses of the Condominium shall be all of the expenditures which are made or incurred by or on behalf of the Association in connection with the exercise of its powers and responsibilities, and shall include, but shall not be limited to, the following:

- A. Management fees and expenses of administration of the Condominium;
- B. Common utility bills and charges for other common services.
- C. Premiums for all insurance policies as may be maintained by the Association.
- D. The expenses of performing the maintenance, repair, renovation, restoration and replacement work which is the responsibility of the Association under Article IX hereof;
- E. Such other costs, expenses and liabilities as may be determined from time to time by the Board of Directors to be common expenses; and
- F. The creation and maintenance of such reserve funds as are required to be maintained by the Association under Section 12.3 below, and such other reserve funds as the Board of Directors shall determine.

12.3 **BUDGET, PAYMENT DATES.** No less than thirty days prior to the commencement of each fiscal year of the Association, the Board of Directors shall adopt a budget for the succeeding fiscal year, which budget (i) shall estimate the amount of common expenses which are anticipated to be incurred during such year, and (ii) shall make provisions for an adequate reserve fund for the maintenance, repair and replacement of those portions of the Property which are to be maintained, repaired and replaced by the Association and which must be maintained, repaired or replaced on a periodic basis. Prior to the commencement of such fiscal year, the Board of Directors shall furnish a copy of such budget to each unit owner, together with a written statement of the amount of such common expenses which shall be assessed against such unit owner for such fiscal year. Unless otherwise determined by the Board of Directors, each unit owner shall pay such assessment to the Association in equal monthly installments on or before the first day of each month. In addition, any fees, charges, and other amounts which shall be payable by any unit owner to the Association shall be added to and shall, unless paid at the

time the same are incurred or at some other time determined by the Board of Directors, be due and payable as part of the installment of the assessment next coming due.

12.4 SPECIAL ASSESSMENTS. If for any reason, including non-payment of any such unit owners' assessments, an annual budget adopted by the Board of Directors for any fiscal year proves inadequate to defray the common expenses for such fiscal year, the Board of Directors may, at any time, levy a special assessment to raise the additional funds necessary to defray such common expenses. In addition, the Board of Directors shall be authorized to levy the special assessments described in Section 12.6 hereof, upon the circumstances described in the said Section 12.6. Any special assessment levied by the Board of Directors pursuant to this Section 12.4 shall be payable at such time and in such installments as the Board of Directors shall determine. Additionally, the Board of Directors shall be authorized to levy special assessments against all of the condominium units under the circumstances described in Section 12.6 of this Declaration.

12.5 EQUAL ASSESSMENT. Except as provided for differently herein, no expenses associated with the maintenance, repair, renovation, restoration or replacement of any limited common element shall be specially assessed against the unit or units to which such limited common element is assigned.

12.6 SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the assessments which shall be levied against the unit owners as provided herein, the Board of Directors shall be authorized, upon the affirmative vote of the unit owners of units to which two-thirds (2/3rds) of the votes in the Association appertain, to levy a special assessment for the purpose of defraying, in whole or in part, the costs of any capital improvement to be made upon the common elements. Any such special assessment for any capital improvement to be made upon the common elements shall be payable at such time and in such installments as the Board of Directors shall determine.

12.7 COLLECTION. In addition to all other remedies provided by law, the Association may enforce collection of the assessments for which a unit owner is liable, together with all other amounts as may be owed by such unit owner to the Association, as hereinafter provided.

(a) In the event that any unit owner shall fail to pay any installment of any assessment levied against him within ten (1) days after the date such installment shall be due and payable, the entire unpaid balance of such assessment may, at the option of the Board of Directors, be accelerated and be declared immediately due and payable in full, without notice to such unit owner.

(b) In the event that any unit owner shall fail to pay within five (5) days after the same shall be due, any amounts due and payable to the Association, such unit owner shall be liable for the payment of, and shall pay, in addition to the amounts so due the Association.

(1) A late charge equal to the amount of Ten Dollars (\$10.00) or Ten

percent (10%) of the amount so due, whichever is the greater;

- (2) Interest on the amount so due, and the aforesaid late charge relating thereto, from the date the same were first due and payable, at the rate of Twelve percent (12%) per annum, until paid;
- (3) The costs of collection, including court costs, the expenses of sale, any expenses required for the protection and preservation of the unit, and reasonable attorney's fees actually incurred; and
- (4) In the event the Association shall seek to foreclose its lien on the condominium unit interest, any additional fees assessed from the time of the institution of suit until the sale of the condominium unit at foreclosure (or until the judgment rendered in such suit is otherwise satisfied).

(c) The lien for assessments in favor of the Association provided by Code Section 35-8A-316 of the Act shall include all sums as may become payable by a unit owner to the Association pursuant to this declaration

(d) The right of a unit owner, and all persons entitled to occupy the unit of such owner and to use the common elements shall be suspended for the period of time any amount due and owing to the Association in regard to any condominium unit owned by such unit owner shall remain unpaid. In no event, however, shall any such suspension deny any unit owner, or the occupants of any unit, access to the unit owned or occupied, nor cause any hazardous or unsanitary condition to exist.

12.8 FEE FOR STATEMENTS OF AMOUNTS DUE. The Association may require the payment of a reasonable fee as a prerequisite to its issuance of any statement pursuant to subsection (h) of Code Section 35-8A-316 of the Act.

12.9 DEED IN LIEU OF FORECLOSURE OF FIRST MORTGAGE.

Notwithstanding anything contained in this Declaration or in the Act which may be construed to the contrary, in the event any first mortgagee shall come into possession of any condominium unit by virtue of any deed or assignment in lieu of foreclosure of a first mortgage, such first mortgagee shall not be liable for, nor shall such condominium unit be subject to a lien for, any assessment chargeable to such condominium unit on account of any period prior to the time such first mortgagee shall so come into possession of such condominium unit; provided, however, that such unpaid assessment or assessments shall be deemed to be common expenses collectible from all unit owners, including such first mortgagee. The provisions of this Section 12.9 are in addition to, and not in lieu of the provisions of Code Section 35-8A-317 of the Act.

ARTICLE XIII
COMMON PROFITS

Any surplus remaining after the application of the common profits to the payment of the common expenses shall be either (a) distributed to, or credited to the next assessments chargeable to, the unit owners, or (b) added to the reserve funds maintained by the Association, as the Board of Directors shall determine.

ARTICLE XIV
COMPLIANCE WITH CONDOMINIUM REQUIREMENTS

14.1 **COMPLIANCE**. All unit owners and all persons who are entitled to occupy a unit shall comply with and abide by all terms, provisions and restrictions of this Declaration, the Articles of Incorporation and the Bylaws, the Act, and all rules and regulations which shall be adopted by the Board of Directors in regard to the use and occupancy of the Property. In the event that any unit owner or any person who is entitled to occupy any unit shall fail to comply with or abide by any such term, provision, restriction or other rule or regulation, the Association shall have the right to proceed at law or in equity to compel compliance or abidance therewith. In the event that any owner shall permit or suffer to exist any condition upon his unit or on any portion of the limited common elements (if any) assigned to his unit which is not in compliance with any of the terms, provisions and restrictions of this Declaration, the Articles of Incorporation, the Bylaws, or the Act, or any rule or regulation adopted by the Board of Directors, the Association shall have the right to enter in and upon said unit or limited common element and remove or correct such non-complying condition, and the unit owner who permitted or suffered such condition to exist shall be liable to the Association for all of the costs and expenses as it shall incur in so doing. Such unit owner shall pay all such costs and expenses to the Association promptly upon demand. In no event shall the Association, or any of its agents, have any liability to any unit owner for entering in or upon his unit or the limited common elements (if any) assigned to his unit and correcting or removing any such non-complying condition pursuant to the provisions of this Article XIV. In the event the Association shall employ legal counsel to enforce the compliance or abidance by any unit owner or by any person entitled to occupy any unit of such owner with any of the aforesaid terms, provisions, restrictions or other rules and regulations, such unit owner shall be liable to the Association for all attorneys' fees so incurred by the Association, and such unit owner shall pay such attorneys' fees to the Association promptly upon demand.

14.2 **FINES**. In addition to all the remedies provided to the Association in this Articles XIV and elsewhere in this Declaration, the Board of Directors shall be empowered to impose and assess fines against any unit owner who, or whose lessee, shall fail to comply with or abide by any of the terms, provisions and restrictions of this Declaration, the Articles of Incorporation, the Bylaws, the Act, or (subject to any notice and hearing procedures set forth in the Association's Bylaws) any rule or regulation which shall be adopted by the Board of Directors in regard to the use and occupancy of the Property. All such fines shall be in an amount which shall be

determined by the Board of Directors; provided, however, that no such fine imposed for any one failure of compliance or abidance with any such term, provisions, restriction, rule or regulation shall exceed that amount which is equal to one-half (1/2) of the monthly assessment installment then being assessed against any unit owned by such unit owner. Each day any unit owner or any lessee of any unit shall fail to comply with or abide by any of the foregoing terms, provisions, restrictions, rules and regulations (or shall fail to cause their respective family members to comply with or abide by the same) after such unit owner or lessee shall have been notified of the same shall constitute a separate failure of compliance or abidance and shall authorize the imposition and assessment of a separate fine not in excess of the aforesaid amount.

14.3 NO WAIVER. No delay, failure or omission on the part of the Association in exercising any right, power or remedy provided for in this Article XIV in the event of the failure of any unit owner, or of any person who is entitled to occupy a unit, to comply with or abide by any of the terms, provisions and restrictions of this Declaration, the Articles of Incorporation, the Bylaws, the Act, or any rule or regulation adopted by the Board of Directors in regard to the use and occupancy of the Property, shall be deemed a waiver of the right to do so thereafter as to the same failure of compliance or abidance, or as to a failure of compliance or abidance occurring prior thereto or subsequent thereto.

14.4 COMPLIANCE BY UNIT OWNER'S FAMILY AND LESSEES. Every unit owner shall have the responsibility of causing his lessee, and the persons living with him or his lessee, to comply with and abide by all of the terms, provisions and restrictions of this Declaration, the Articles of Incorporation, the Bylaws, the Act, and all rules and regulations adopted by the Board of Directors in regard to the use and occupancy of the Property. Every unit owner shall have such responsibility notwithstanding the fact that any lessee of a unit owned by such unit owner may be fully liable for any failure to comply with or abide by any such term, provision, restriction or other rule or regulation. All agreements by which a unit is leased shall provide that all the terms of the lease shall be subject in all respects to all of the terms, provisions and restrictions of this Declaration, the Articles of Incorporation and the Bylaws, and all rules and regulations adopted by the Board of Directors, and that failure by such lessee to comply with and abide by all of such terms, provisions, restrictions, and other rules or regulations shall be a default by such lessee under such lease agreement. The violation of any of the terms, provisions, or restrictions of this Declaration, the Articles of Incorporation, the Bylaws, the Act or any rule or regulation adopted by the Board of Directors in regard to the use and occupancy of the Property, by any family member of any unit owner, or by any lessee of such unit owner (or such lessee's family member), shall be deemed to be a violation thereof by such unit owner, the same as if the unit owner himself had performed the act, or had been responsible for the omission, creating such violation.

14.5 ENFORCEMENT BY UNIT OWNERS. In the event that any unit owner, or any person who is entitled to occupy any unit, shall fail to comply with or abide by any term, provision or restriction of this Declaration, the Articles of Incorporation, the Bylaws, or the Act, or any decision of the Association which is made pursuant to its authority under the foregoing or any rule or regulation which shall be adopted by the Board of Directors in regard to the use and

occupancy of the Property, then any other unit owner is aggrieved by such failure of compliance or abidance shall have the right to proceed at law or in equity to compel such unit owner, or such unit occupant, to comply therewith and abide thereby. Additionally, any unit owner who, or whose lessee, shall fail to comply with or abide by any such term, provision, restriction, decision, rule or regulation shall be liable for any damages as may be suffered by any other unit owner as a consequence of such failure.

14.6 FAILURE OF ENFORCEMENT. In no event shall the Board of Directors, or any

of its agents, be liable to anyone whomever on account of the failure to bring any action or enforce any remedy provided for in this Article XIV for the failure by any unit owner or any person entitled to occupy a unit to comply with or abide by any of the terms, provisions or restrictions of this Declaration, the Articles of Incorporation, the Bylaws, the Act or any rule or regulation adopted by the Board of Directors in regard to the use and occupancy of the Property.

ARTICLE XV DAMAGE OR DESTRUCTION

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

15.1 ESTIMATES OF THE COST OF REPAIR. As soon as practicable following the occurrence of any damage to or destruction of any portion of the common elements, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing or restoring the same to substantially the same condition as the same was in prior to the occurrence of such damage or destruction, and shall proceed with the filing and adjustment of all claims arising under insurance maintained by the Association as a result of such damage or destruction.

15.2 DETERMINATION TO REPAIR, RECONSTRUCT OR REBUILD COMMON ELEMENTS. Any damage to or destruction of any portion of the common elements will be repaired, reconstructed or rebuilt unless the owners of the units to which two-thirds (2/3rds) of the votes in the Association are allocated shall determine not to repair, reconstruct or rebuild the same; except, however, that any damage to or destruction of any portion of the sewage disposal system constituting part of the common elements of the Condominium will be repaired, reconstructed or rebuilt in any event.

15.3 DETERMINATION TO REPAIR, RECONSTRUCT OR RE-LANDSCAPE UNIT GROUNDS. Any damage to or destruction of any portion of the Unit Grounds of any condominium unit(s) will be repaired, reconstructed, or re-landscaped unless the owner(s) of the Unit Grounds so damaged or destroyed and a majority of the members of the Board of Directors shall determine not to repair, reconstruct or re-landscape the same.

15.4 DETERMINATION TO REPAIR, RECONSTRUCT OR REBUILD

DWELLINGS. The determination to repair, reconstruct or rebuild any Dwelling which may be damaged or destroyed by fire or any other casualty shall be made in the following manner:

(a) If any Dwelling is damaged, but is not rendered untenable by such casualty, such Dwelling shall be repaired in all events.

(b) In the event that any Dwelling is so damaged or destroyed that such Dwelling is thereby rendered untenable, such Dwelling will be repaired, reconstructed or rebuilt, unless within sixty (60) days after the occurrence of such casualty, (1) the owner of the unit on which such damaged or destroyed Dwelling is located, together with (2) the holder of any first mortgage on the unit on which such Dwelling is located, and together with a majority of the Board of Directors shall all determine not to repair, reconstruct or rebuild such damaged or destroyed Dwelling.

(c) For purposes of this Section 15.4, a Dwelling shall be deemed to be untenable only if, as a consequence of the occurrence of a fire or other casualty, such Dwelling has been damaged or destroyed to the extent that it is not fit for present habitation, and the estimated costs of making the repairs necessary to render such Dwelling fit for present habitation shall exceed one-fourth (1/4) of the fair market value of such Dwelling prior to the occurrence of such fire or other casualty.

15.5 MANNER OF REPAIR, RECONSTRUCTION OR REBUILDING. All repairs, reconstruction or rebuilding to be made as a consequence of the occurrence of a fire or other casualty shall be made in accordance with the following provisions:

(a) Common Elements. If the damage to be repaired, reconstructed or rebuilt is to the common elements, such repair, reconstruction or rebuilding shall be substantially in accordance with the plans and specifications for such damaged property prior to the occurrence of such damage, or in accordance with such different plans and specifications as may be approved for such purpose by the Board of Directors.

(b) Units. If the damage to be repaired, reconstructed, rebuilt or re-landscaped is to any unit (i.e., either to the Dwelling or the Unit Grounds constituting a part of such unit, or both) such repair, reconstruction, rebuilding or re-landscaping shall be substantially in accordance with the plans and specifications for such damaged unit prior to the occurrence of such damage, or in accordance with such differing plans and specifications as are approved for such purpose by both the owner of the unit which is to be so repaired, reconstructed, rebuilt or re-landscaped, and by the Board of Directors.

(c) Supervision of Reconstruction. All of the work of repairing, reconstructing, rebuilding or re-landscaping any portion of the common elements shall be the responsibility of the Association. All of the work of repairing, reconstructing or rebuilding any Unit or limited common element shall be the responsibility of the Association, in consultation with the owner of

the unit on which such Dwelling or improvement is located, and such work shall be performed in accordance with all the terms, provisions and requirements of this Declaration.

15.6 COSTS OF REPAIR, RECONSTRUCTION OR REBUILDING. The cost of repairing, reconstruction, rebuilding or re-landscaping any portion of the common elements or any unit or limited common element which shall be damaged or destroyed shall be paid with any insurance proceeds which shall be paid to the Association on account of such damage or destruction. If the proceeds of insurance are insufficient to pay for the costs of repairing or restoring any portion of the common elements, units, or limited common elements, which may be damaged or destroyed, the Board of Directors shall levy a special assessment against all of the unit owners to raise the excess funds necessary to pay such costs.

15.7 DWELLINGS NOT REBUILT. In the event that it shall be determined in the manner provided in Section 15.4 hereof not to repair, reconstruct or rebuild any Dwelling, the Association shall be responsible for removing any remnants of the Dwelling from the property and restoring the property to a neat condition. Any unused insurance proceeds received for the loss of the unit shall be paid to the owner.

ARTICLE XVI CONTROL BY DECLARANT

Notwithstanding anything contained elsewhere in this Declaration, or in the Articles of Incorporation or Bylaws, which may be construed to the contrary, the Declarant shall be authorized to appoint and remove any member or members of the Board of Directors and any officer or officers of the Association. The Declarant's authority to appoint and remove members of the Board of Directors and officers of the Association shall expire upon the first of the following to occur: (a) the expiration of seven (7) years after the date upon which this Declaration shall be recorded with the Judge of Probate of Lee County, Alabama; (b) the date as of which units to which three-fourths (3/4ths) of the undivided interests in the common elements appertain shall have been conveyed by the Declarant to unit owners other than a person or persons constituting the Declarant; (c) the date which is four (4) months after the date as of which seventy-five (75%) of the units within the Condominium shall have been conveyed by the Declarant to unit purchasers; or (d) the surrender by the Declarant of the authority to appoint and remove members of the Board of Directors and officers of the Association by an express amendment to this Declaration executed and recorded by the Declarant.

ARTICLE XVII AMENDMENT

This Declaration, and the terms, provisions and restrictions thereof, may be amended only in accordance with the terms and provisions of this Article XVII.

17.1 EXPANSION AMENDMENTS. As more specifically provided in Article XI hereof, the Declarant has the right to amend this Declaration at any time, and from time to time,

within the time period specified therein, as the same may be extended as provided in Section 11.2 hereof, for the purpose of adding all or any portion of the Additional Property to the Condominium. All such amendments shall conform to the requirements set forth in Article XI hereof, and shall be duly executed on behalf of those persons specified in Section 11.5 hereof. No amendment to this Declaration made pursuant to the provisions of Article XI hereof shall require the joinder, approval or consent of any persons other than those persons specified in Section 11.5 hereof.

17.2 CERTAIN AMENDMENTS. Those amendments to this Declaration which are to be made for the purposes hereinafter set forth may be made in accordance with the procedures identified or described hereinbelow for such purpose.

(a) Any amendment to this Declaration to be made for the purpose of reassigning any limited common element shall be made in accordance with the procedures and provisions of Code Section 35-8A-208 of the Act.

(b) Any amendment to this Declaration to be made for the purpose of relocating the boundaries between adjoining units shall be made in accordance with the procedures and provisions of Code Section 35-8A-212 of the Act.

(c) Any amendment to this Declaration to be made for the purpose of surrendering the Declarant's right to appoint and remove any member or members of the Board of Directors and any officer or officers of the Association pursuant to item (c) of Article XVI hereof shall be executed and recorded by the Declarant and by any holder of a first mortgage upon any condominium units then owned by the Declarant.

17.3 OTHER AMENDMENTS. Except as otherwise provided in the Act, all amendments to this Declaration, other than those types described in Section 17.1 and 17.2 hereof, may be made only by agreement of the following required persons.

(a) The unit owners to which at least seventy-five percent (75%) of the vote in the Association appertain; and

(b) The Declarant, if, at the time such amendment is to be made, the Declarant has the right to appoint and remove the members of the Board of Directors and officers of the Association pursuant to the provisions of Article XVI hereof.

ARTICLE XVIII
TERMINATION OF CONDOMINIUM

The Condominium shall be terminated or abandoned only by the agreement of (a) the unit owners of units to which at least ninety percent (90%) of the votes in the Association appertain, together with (b) all first mortgages of any unit or units then owned by the Declarant, Notwithstanding anything to the contrary contained herein or in the Articles of Incorporation, the Bylaws, the Act or the Alabama Nonprofit Corporation Code, no agreement to terminate the Condominium as hereinabove provided shall be effective unless the necessary votes shall have been cast at a meeting of the members of the Association at which the owners of at least ninety percent (90%) of the condominium units are present at the time such vote is taken, nor shall any proxy votes be counted toward satisfaction of the requirements for approving such termination.

ARTICLE XIX
AMENDMENT OF ACT

In the event that after the date this Declaration is recorded with the Judge of Probate of Lee County, Alabama, the Act shall be amended, the terms, provisions and restrictions of the Act, as the same existed prior to such amendment, shall continue to control for purposes of this Declaration, to the extent that the same shall be permitted by law, or to the extent that such prior existing terms, provisions or restrictions of the Act would be valid or enforceable if the same were set forth in a Declaration of Condominium made after the date of such amendment as an alternative to such amended term, provision or restriction.

To the extent necessary to effectuate the foregoing provisions of this Article XIX, each unit owner, by acceptance of the Deed of Conveyance to his condominium unit, shall be deemed to thereby waive, to the extent permitted by law, the effect of any amendment to the Act which shall be made after the date this Declaration is recorded with the Judge of Probate of Lee County, Alabama.

Nothing set forth in this Article XIX shall be deemed to prohibit this Declaration from being amended in the manner provided in Article XVII so as to render applicable to this Declaration and to the Condominium any amendment to the Act which may become effective after the date this Declaration is recorded with the Judge of Probate of Lee County, Alabama.

ARTICLE XX
PREPARER OF DECLARATION

The name and address of the attorney who prepared this Declaration is Robert H. Pettye,
Attorney at Law, 709 Avenue A, Opelika, AL 36801.

ARTICLE XXI
EASEMENTS

21.1 EASEMENT FOR UNIT ACCESS. Any driveway located on any unit, which driveway serves as the sole means of vehicular access from more than one unit (and any Dwelling thereof) to any street, road, or drive which lines different portions of the Property, or portions of the Property with any public right of way (or any easement providing access to any public right-of-way) shall be burdened with a perpetual, nonexclusive and mutual easement for vehicular and pedestrian ingress and egress to and from the units (and any Dwellings thereon) served by such driveway, for the benefit of all such units and the persons entitled to occupy such units (and their respective guests and invitees).

21.2 EASEMENT FOR UTILITIES. To the extent that any utility line, pipe, wire, or conduit serving any part of the common elements or any unit or units (including, without limitation, any part of the sewage disposal system comprising a portion of the common elements) shall lie wholly or partially within the boundaries of a unit, such unit shall be burdened with an easement for the use, maintenance, repair and replacement of such utility line, pipe, wire or conduit, such easement to be in favor of the common elements, or the unit or units, as the case may be, served by the same.

21.3 EASEMENT FOR CERTAIN REPAIRS. Every unit (including, but not limited to, any Dwelling located thereon) is and shall be subject to an easement in favor of the Association for the Association, acting through its directors, officers, agents, contractors, employees or other representatives, to enter upon such unit in order to carry out all of the Association's duties, powers and responsibilities under the Act, the Bylaws, the Declaration and the other condominium instruments. The easement herein described shall be exercisable by any member of the Board of Directors, by an officer of the Association, and by any authorized agent, contractor, employee or representative, or employee or the management firm employed by the Association pursuant to Section 7.3 hereof. In no event shall any person who is authorized to exercise the easement herein described be liable for any damages as may be inflicted on any unit in connection with the exercise of such easement, except for such damage as such person may inflict by his gross negligence or intentional misconduct.

21.4 SALES EASEMENTS. For so long as the Declarant shall own any condominium unit primarily for the purpose of sale, there shall be reserved unto the Declarant and his sales agent an easement for the use of such portions of the Property (other than units conveyed by the Declarant to unit owners other than the Declarant), as the Declarant shall deem desirable in connection with its sales activities for such condominium unit or condominium units owned by it. Such easement shall include the right to erect such signs upon the Property, and to conduct such sales and promotional activities upon the Property, as it shall in its sole discretion determine.

21.5 ACCESS AND UTILITY EASEMENTS. All portions of the Property hereby submitted to the Act, shall be subject to the following easements, which easements are and shall be reserved in favor of the Declarant and its successors and assigns.

(a) A perpetual, nonexclusive easement, over, on, across and through all roads, drives, streets (if any), parking areas, paved areas, non paved areas, or other areas whatsoever (except for units), located on the Property, for the purpose of pedestrian and vehicular traffic, including, but not limited to, vehicular and pedestrian traffic in connection with the construction of improvements on any portion(s) of the Property.

(b) A perpetual, nonexclusive easement, for the use, maintenance, repair and replacement of all sewer, water, gas, electric, telephone and other utility lines and pipes now or hereafter located in, on, under or through the Property.

ARTICLE XXII INSURANCE AND CASUALTY LOSSES

22.1 INSURANCE. The Board or its duly authorized agent shall have the authority to and shall obtain insurance insuring the condominium property, including the buildings and the units (but excluding all improvements and betterments made by the unit owners at their own risk), against fire and other hazards and vandalism and malicious mischief in amounts sufficient to cover the full replacement cost (subject to such "deductibles" as the Board may determine) of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall also obtain public liability insurance covering all common elements, such workmen's compensation insurance as may be required by law, and such other insurance as the Board may from time to time deem appropriate, upon such terms as the Board may decide. Premiums for all such insurance shall be an expense of the Association and all such insurance coverage obtained by the Board shall be written in the name of the Association as Trustee for each of the owners in proportion to the owners percentage of undivided interest in and to the common elements. Such insurance shall be governed by the following provisions.

(a) Companies. All policies shall be written with a company licensed to do business in the State of Alabama and holding a rating of "AAA" or better by Best's Insurance Reports.

(b) Beneficiaries. All policies shall name the Association as beneficiary.

(c) Insurance Certificate. Provision shall be made for the issuance of a certificate of insurance to each owner and his mortgagee, if any, which shall specify the proportionate amount of such insurance attributable to the particular owner's unit.

(d) Policies. The original of all policies and endorsements thereto shall ~~be~~ deposited with the Board or with any Insurance Trustee appointed by the Board.

(e) Adjustment. Exclusive authority to adjust losses under policies hereafter in force on the property shall be vested in the Board or its duly authorized agent; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(f) Contributions. In no event shall the insurance coverage obtained and maintained by the Board hereunder be brought into contribution with insurance purchased by individual owners or their mortgagees.

(g) Additional Insurance. It shall be the individual responsibility of each owner at his own expense to provide, as the owner sees fit, title insurance on his individual unit, homeowner's liability insurance, theft and other insurance covering improvements, betterments and personal property damage and loss. Each unit owner may obtain additional insurance at his own expense, provided, however, that no owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Board, on behalf of all of the owners and their mortgagees, may realize under any insurance policy which the board may have in force on the condominium property at any particular time. Any owner who obtains an individual insurance policy covering any portion of the condominium property, other than improvements and betterments made by such owner at his expense and personal property belonging to such owner, shall file a copy of each such individual policy with the Board within 30 days after obtaining such insurance.

(h) Insurance Review. The Board shall conduct an annual insurance review which shall include a replacement cost appraisal, without respect to depreciation, of all improvements on the condominium property (with the exception of improvements and betterments made by the respective owners at their expense) by one or more qualified persons at least one of whom should be qualified building cost estimator.

(i) Policy Provisions. The Board or its duly authorized agent shall be required to make every effort to secure insurance policies that will provide for the following: (i) a waiver of subrogation by the insurer as to any claims against the Board, its duly authorized agent, the owners and their respective servants, agents and guests; (ii) a waiver by the insurer of its right to repair or reconstruct instead of paying cash; (iii) that the policies on the condominium property cannot be canceled, invalidated or suspended on account of any one or more individual owners; (iv) that the policies on the condominium property cannot be canceled, invalidated or suspended on account of the conduct of any director, officer, or employee of the Association or its duly authorized agent without a prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its agent, any owner or mortgagee; and (v) that any "other insurance" clause in the master policy exclude individual owner's policies from consideration.

22.2 NO PARTITION. There shall be no judicial partition of the Property, or any part

thereof, the owner of any unit hereby waiving any such right of judicial partition, nor shall the Developer or any person acquiring any interest in the condominium property, or any part thereof, seek any such judicial partition on account of damage or destruction unless the condominium property has been removed from the provisions of the Act.

22.3 INSURANCE PROCEEDS.

(a) Receipt. All insurance policies purchased by and in the name of the Association shall provide that proceeds covering property losses shall be paid to the Association and its board of directors. Immediately upon the receipt by the Association of such proceeds, the Association shall deposit the proceeds in a special escrow account until same are dispersed pursuant to the terms of this Declaration.

ARTICLE XXIII
SEVERABILITY

Wherever possible, all of the terms, provisions and restrictions of this Declaration shall be interpreted in such a manner as to be effective and valid, but if any of such terms, provisions or restrictions, or the application of the same to any person or property, shall be held to be ineffective or invalid, such ineffectiveness or invalidity shall not affect the effectiveness or validity of any other term, provision or restriction herein set forth which can be given effect without the ineffective or invalid term, provision or restriction, and to this end the terms, provisions and restrictions of this Declaration are declared to be severable.

ARTICLE XXIV
CONTRACT FOR SECURITY MONITORING

The Association is specifically authorized to enter into a long term contract, not to exceed ten (10) years, to provide monitoring for the fire and burglary alarms/monitors in each unit.

ARTICLE XXV
LIMITATION ON ACTION OF ASSOCIATION
AND BOARD OF DIRECTORS

Anything hereinabove to the contrary notwithstanding, in case of condemnation or substantial loss to the units and/or common elements of the Condominium, unless at least two-thirds (2/3rds) of the first mortgagees (based on one vote for each first Mortgage owned) or owners (other than the sponsor, developer or builder) of the individual Condominium Units have given their prior written approval, the homeowners association may not:

1. By act or omission seek to abandon or terminate the Condominium Project.
2. Change the pro rata interest or obligations of any Condominium Unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or