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**DECLARATION OF CONDOMINIUM  
FOR  
VILLAGE ON THE GREEN, A CONDOMINIUM**

A Condominium Pursuant to  
the Alabama Uniform Condominium Act of 1991,  
Title 35, Chapter 8A of The Code of Alabama 1975

**UPON RECORDING RETURN TO:**

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**DECLARATION OF CONDOMINIUM  
FOR  
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**DECLARATION OF CONDOMINIUM**  
**FOR**  
**VILLAGE ON THE GREEN, A CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM is made by F&W Group, L.L.C., an Alabama limited liability company (hereinafter called the "Declarant"), having its principal place of business located at 709 Royal Parkway, Dothan, Alabama 36305.

**WITNESSETH**

WHEREAS, Declarant is the fee simple owner of that certain tract or parcel of land lying and being in the City of Dothan, Houston County, Alabama, as more particularly described in **Exhibit "A"** attached hereto and incorporated herein by reference (hereinafter called the "Property"), subject to the matters set forth on **Exhibit "B"** attached hereto and incorporated herein by reference (the "Permitted Exceptions"); and

WHEREAS, Declarant is in the process of planning and constructing certain improvements on the Property as shown on the Plat and the Plans which are referenced in Article 3 hereof; and

WHEREAS, Declarant has duly incorporated Village on the Green Condominium Association, Inc. as a nonprofit membership corporation under the laws of the State of Alabama; and

WHEREAS, the Declarant desires to submit the Property to the condominium form of ownership pursuant to the provisions of the Alabama Uniform Condominium Act of 1991, Title 35, Chapter 8A of The Code of Alabama 1975, as amended (the "Act"), as the same is in effect on the date hereof and the terms and conditions hereinafter set out.

NOW, THEREFORE, the Declarant does hereby submit the Property to the condominium form of ownership pursuant to, subject to and in accordance with the provisions of the Act and the terms and conditions hereinafter set forth and subject to the Permitted Exceptions.

**ARTICLE 1: NAME**

The name of the condominium is Village on the Green, a Condominium (hereinafter referred to as the "Condominium").

**ARTICLE 2: DEFINITIONS**

The terms used in this Declaration, the By-Laws, and the Articles of Incorporation shall have their normal, generally accepted meanings or the meanings given in the Act or the Alabama Nonprofit Corporation Act. Certain terms used in this Declaration, the By-Laws, and the Articles of Incorporation shall be defined as follows:

2.1. "Act": The Alabama Uniform Condominium Act of 1991, Title 35, Chapter 8A of The Code of Alabama 1975, as amended from time to time.

2.2. "Additional Property": That property described on **Exhibit "E"** attached hereto and incorporated herein, which may be submitted to the Condominium as provided in Article 23.

2.3. "ARB": The Architectural Review Board, as described in Article 12.

2.4. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Village on the Green Condominium Association, Inc., filed, or to be filed in the Public Records, as amended from time to time.

2.5. "Association": Village on the Green Condominium Association, Inc., an Alabama nonprofit corporation, its successors and assigns.

2.6. "Board of Directors" or "Board": The elected body responsible for management and operation of the Association as further described in the By-Laws.

2.7. "By-Laws": The By-Laws of Village on the Green Condominium Association, Inc., attached to this Declaration as **Exhibit "F"** and incorporated herein by this reference.

2.8. "Common Element(s)": That portion of the property subject to this Declaration which is not included within the boundaries of a Unit, as more particularly described in this Declaration.

2.9. "Common Expense(s)": The expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including, but not limited to, (a) those expenses incurred for maintaining, repairing, replacing, and operating the Common Elements, including the Limited Common Elements; (b) expenses determined by the Association to be Common Expenses and which are lawfully assessed against Owners; (c) expenses declared to be Common Expenses by the Act or Condominium Instruments; and (d) reasonable reserves established for the payment of any of the foregoing.

2.10. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing within the Condominium. Such standard may be more specifically determined by the Board of Directors and the ARB.

2.11. "Condominium" All that property described in Exhibit "A" submitted to the provisions of the Act by this Declaration, and such other property as may hereafter be submitted to the provisions of the Act by supplement or amendment to this Declaration, together with all buildings and improvements thereon.

2.12. "Condominium Instruments": This Declaration and all exhibits to this Declaration, including the By-Laws, the Articles of Incorporation, the rules and regulations and any architectural guidelines of the Association, the Plat and Plans, and any cost sharing agreements relating thereto, all as may be supplemented or amended from time to time.

2.13. "Declarant": F&W Group, L.L.C., an Alabama limited liability company, its successors or assigns.

2.14. "Development Period": The period of time during which the Declarant owns any portion of the Condominium, or has the unilateral right to subject Additional Property to this Declaration pursuant to Article 23. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public Records.

2.15. "Development Right(s)": Any right or combination of rights reserved herein by the Declarant to (a) add real property to the Condominium, (b) create Units, Common Elements, or Limited Common Elements, (c) subdivide Units or convert Units into Common Elements, or (d) withdraw real property from the Condominium.

2.16. "Eligible Mortgagee(s)": Those holders of first Mortgages secured by Units in the Condominium who have submitted a written request to the Association to be notified of certain items as set forth in this Declaration.

2.17. "Limited Common Element(s)": A portion of the Common Elements reserved for the exclusive use of those entitled to occupy one (1) or more, but less than all, Units, as more particularly set forth in this Declaration.

2.18. "Majority": Those eligible votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

2.19. "Mortgage": Any mortgage, deed to secure debt, deed of trust, or other transfer or conveyance for the purpose of securing the performance of an obligation.

2.20. "Mortgagee": The holder of any Mortgage.

2.21. "Occupant": The Owner(s) or lessee(s) of any Unit and their respective guests, family, tenants, and invitees, or any other Person who either lawfully or unlawfully occupies or comes upon such Unit.

2.22. "Owner" or "Unit Owner": Each record title holder of a Unit within the Condominium, but not including a Mortgagee.

2.23. "Person": Any individual, corporation, firm, association, partnership, trust, limited liability company, or other legal entity.

2.24. "Public Records": The Official Records of the County Clerk of Houston County, Alabama, or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate in Houston County, Alabama.

2.25. "Total Eligible Association Vote": The total vote in the Association, less any votes that have been suspended pursuant to Section 8.3.

2.26. "Unit": That portion of the Condominium intended for individual ownership and use, and for which a certificate of occupancy has been issued, as more particularly described in the Condominium Instruments.

### ARTICLE 3: LOCATION, PROPERTY DESCRIPTION, PLATS AND PLANS

The Condominium subject to this Declaration and the Act is located in the City of Dothan, Houston County, Alabama, being more particularly described in Exhibit "A" attached to this Declaration, which exhibit is specifically incorporated herein by this reference. A plat of survey relating to the Condominium and floor plans relating to the Condominium have been filed and recorded in Plat Book 11, Page 63 of the Public Records. Notwithstanding anything herein to the contrary, the Declarant shall have the right to file additional plats and plans from time to time as necessary or appropriate to

further describe the Units or to comply with the Act. The Plat and Plans are incorporated herein by reference as fully as if the same were set forth in their entirety herein.

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

#### ARTICLE 4: UNITS AND BOUNDARIES

Upon completion of initial construction, the Condominium will be divided into twenty (20) separate Units, the Limited Common Elements and the Common Elements. Each Unit consists of a dwelling space. The maximum number of Units that may be created within the Condominium is twenty one. Each Unit, together with an undivided interest in the Common Elements, shall be conveyed as a separately designated and legally described freehold estate subject to the Act and the Condominium Instruments. The Units are depicted on the Plats and Plans. Each Unit includes that part of the structure which lies within the following boundaries:

- 4.1. Horizontal (Upper and Lower) Boundaries. There are no horizontal boundaries.
- 4.2. Vertical Boundaries. The perimetrical or vertical boundaries of each Unit shall be the exterior walls of the building in which the Unit is located. With respect to common walls between Units, the perimetrical or vertical boundary of the Units served thereby shall be the centerline of such wall.
- 4.3. Additional Information to Interpret Unit Boundaries.
  - (a) Entry doors, exterior doors and exterior glass surfaces, including, but not limited to, windows and glass doors serving the Unit, and roof overhangs and cantilevered bays shall be included within the boundaries of the Unit.
  - (b) Heating and air conditioning systems serving only a single Unit (including any part of such system located outside the boundaries of the Unit), all duct work for heating and air conditioning systems and appliances and plumbing fixtures within a Unit, shall be a part of the Unit.
  - (c) To the extent that any chutes, flues, ducts, conduits, wires, bearing walls, bearing columns, or any other apparatus lies partially inside of the designated boundaries of a Unit, any portions thereof serving only that Unit shall be deemed a part of that Unit; all portions thereof serving more than one Unit or any portion of the Common Elements shall be deemed a part of the Common Elements.
  - (d) In interpreting deeds and plans, the existing physical boundaries of a Unit as originally constructed or of a Unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in any deed or plan, regardless of settling or lateral movement of the building in which the Unit was located, and regardless of minor variance between the boundaries shown on the plans or in a deed and those of the Unit.
  - (e) The ownership of each Unit shall include, and there shall pass with each Unit as appurtenances thereto whether or not separately described in the conveyance thereof, that percentage of

the right, title and interest in the Common Elements attributable to such Unit, together with membership in the Association and an undivided interest in the funds and assets held by the Association. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

#### ARTICLE 5: COMMON ELEMENTS

The Common Elements consist of all portions of the Condominium not located within the boundaries of a Unit. Ownership of the Common Elements shall be by the Unit Owners as tenants-in-common. The percentage of undivided interest in and to the Common Elements attributable to each Unit shall be as set forth in Exhibit "C" attached hereto and by reference incorporated herein.

Such percentages of undivided interest may be altered only by the consent of all Owners and Mortgagees (or such lesser number of Owners and Mortgagees as may hereafter be prescribed by the Act) expressed in a duly recorded amendment to this Declaration. The percentage of undivided interest of each Owner in the Common Elements is appurtenant to the Unit owned by the Owner and may not be separated from the Unit to which it appertains and such appurtenance shall be deemed to be conveyed or encumbered or to otherwise pass with the Unit whether or not expressly mentioned or described in a conveyance or other instrument describing the Unit.

The Common Elements shall remain undivided, and no Owner or any other Person shall have the right to bring any action for partition or division of the whole or any part thereof except as provided in the Act. Except as provided for Limited Common Elements or as otherwise provided herein, each Owner and the Association may use the Common Elements for the purposes for which they are intended, but no such use shall enter or encroach upon the lawful rights of the other Owners. Each Owner and Occupant shall have a right and easement of use and enjoyment in and to the Common Elements (including the right of access, ingress and egress to and from the Unit over those portions of the Condominium designated for such purpose), and such easement shall be appurtenant to and shall pass with the title to such Unit, subject to the rights of the Unit Owners to the exclusive use of the Limited Common Elements assigned to their respective Units and to the right of the Association to control the use and enjoyment of the Common Elements as provided by the terms of this Declaration. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

#### ARTICLE 6: LIMITED COMMON ELEMENTS

6.1. Designation. The Limited Common Elements and the Unit(s) to which they are assigned are:

(a) to the extent that a patio, terrace, or balcony serving a Unit, together with any enclosure therefor, is not within the boundaries of the Unit, the patio, terrace, or balcony which is appurtenant to such Unit is assigned as Limited Common Element to the Unit having direct access to such patio, terrace, or balcony;

(b) the doorsteps or stoops leading as access to the Unit or to a patio, terrace, or balcony, if any, are assigned as Limited Common Elements to the Unit to which the patio, terrace, or balcony is assigned;

(c) the driveway providing entry to the garage to each Unit is assigned as a Limited Common Element to the Unit so served;

- (d) the yard area is assigned as a Limited Common Element to the adjoining Unit;
- (e) the parking space or spaces or storage space or spaces, if any, which are assigned to a Unit and which are specified by showing such assignment on Exhibit "D" attached hereto and by reference incorporated herein, on the Plat, or on a supplemental plat of survey, or on a supplemental declaration recorded in the Public Records, are assigned as Limited Common Elements to Units so designated on the plat or any supplemental plat;
- (f) the portion of the Common Elements on which there is located any portion of the mechanical, electrical, air conditioning, or heating system exclusively serving a particular Unit or Units is assigned as Limited Common Element to the Unit or Units so served;
- (g) any utility meter which serves only one Unit is assigned as Limited Common Element to the Unit so served; and
- (h) each Unit is assigned one (1) mailbox as Limited Common Element, which will be located in a designated area of the Condominium.

The Limited Common Elements are assigned in accordance with Section 35-8A-208 of the Act and with the Plans.

6.2. Assignment and Reassignment. The Board of Directors, without a membership vote, is hereby authorized to assign and to reassign Limited Common Elements, provided that any such assignment or reassignment shall be made in accordance with the provisions of Section 35-8A-208 of the Act, as amended. Notwithstanding anything herein to the contrary, the Board of Directors is not authorized to assign or reassign the Limited Common Elements without the consent of Declarant during the Development Period. Furthermore, during the Development Period, the Declarant shall have the right to assign and reassign Limited Common Elements, on behalf of the Association, in accordance with Sections 35-8A-205(a)(7) and 35-8A-208 of the Act, and to lease or sell to Owners one (1) or more parking spaces and/or storage spaces to be assigned as Limited Common Elements. The proceeds of the sale of parking spaces as Limited Common Elements shall belong to the Declarant.

6.3. Right to Relocate Equipment Serving a Unit. Notwithstanding any provision to the contrary contained herein, the Board, at the sole expense of the Association, shall have the right without need for a membership vote and without the consent of any affected Unit Owner, to relocate any portion of the air conditioning, heating, plumbing, ventilating, exhaust or electrical system serving a particular Unit, provided that after such relocation, the system serving the Unit functions at least as well and at no greater cost to the Unit Owner as existed prior to the relocation.

## ARTICLE 7: ASSOCIATION MEMBERSHIP AND ALLOCATIONS

7.1. Membership. All Owners, by virtue of their ownership of an interest in a Unit, are members of the Association and shall be entitled to vote on all matters upon which members of the Association are entitled to vote pursuant to this Declaration and the Act and in accordance with the By-Laws.

7.2. Votes. Subject to the provisions of the Condominium Instruments, each Owner shall be entitled to one (1) equally weighted vote for each Unit in which such Owner holds the interest required for membership, which vote shall be appurtenant to such Unit.

7.3. Allocation of Liability for Common Expenses. Except as otherwise provided herein, each Unit is hereby allocated liability for Common Expenses apportioned in accordance with the percentage of undivided interest in the Common Elements appurtenant to the Unit, as shown on Exhibit "C".

(a) Except as provided below, or in the Act, the amount of all Common Expenses shall be assessed against all the Units in accordance with the allocation of liability for Common Expenses described above.

(b) The Board of Directors shall have the power to assess specifically pursuant to this section and to Sections 35-8A-207 and 35-8A-315 of the Act as, in its discretion, it deems appropriate. Failure of the Board of Directors to exercise its authority under this section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the right to exercise authority under this section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this section.

(c) Any Common Expenses benefitting less than all of the Units or significantly disproportionately benefitting all Units may be specifically assessed equitably among all of the Units which are benefitted according to the benefit received.

(d) Any Common Expenses occasioned by the conduct of less than all of those entitled to occupy all of the Units or by the Occupant(s), licensees or invitees of any such Unit or Units may be specifically assessed against such Unit or Units.

For purposes of subsection (b) of this section, non-use or abandonment of Common Elements shall not constitute a benefit to less than all Units or a significant disproportionate benefit among all Units.

## ARTICLE 8: ASSOCIATION RIGHTS AND RESTRICTIONS

8.1. Right of Entry. The Association shall have the right to enter into Units and any Limited Common Elements assigned thereto for maintenance, emergency, security, or safety purposes, which right may be exercised by the Association's Board of Directors, officers, agents, employees, managers, and all police officers, firefighters, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be only during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit. For purposes of this Section, and without limiting the foregoing, a water or other utility leak, fire, strong foul odor, obvious insect infestation or sound indicating that a person or animal might be injured or sick and require immediate medical attention shall be considered emergencies justifying immediate entry into a Unit and any Limited Common Elements assigned thereto. The failure to exercise the rights herein or to exercise said rights in a timely manner shall not create liability to any of the above-referenced parties, it being agreed that no duty to enter a Unit shall exist.

8.2. Rules and Regulations. The Association shall have the right to make and to enforce reasonable rules and regulations governing the use of the Condominium, including the Units, Limited Common Elements, and Common Elements.

8.3. Right of Enforcement.

(a) The Board, or a committee established by the Board for such purpose, may impose sanctions as provided herein and in Section 35-8A-302 of the Act, as amended, for violation of

the Condominium Instruments, after compliance with the notice and hearing procedures set forth in Section 3.23 of the By-Laws. Such sanctions may include, without limitation:

(i) imposing monetary fines which shall constitute a lien upon the Unit of the violator. (Any such fines shall be considered an assessment against the Unit and may be collected in the manner provided for collection of other assessments. In the event that any Occupant of a Unit violates the Condominium Instruments and a fine is imposed, the fine may first be assessed against the Occupant; provided, however, that if the fine is not paid by the Occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.);

(ii) suspending an Owner's right to vote;

(iii) suspending any Person's right to use any recreational facilities within the Common Elements; provided, however, that nothing herein shall authorize the Board to limit ingress or egress to or from a Unit; and

(iv) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association.

(b) In the event that any Occupant of a Unit violates the Condominium Instruments, the Board, or a committee established by the Board for such purpose, may sanction such Occupant and/or the Owner of the Unit that the violator is occupying or visiting.

(c) In addition, the Board, or a committee established by the Board for such purpose, may elect to enforce any provision of the Condominium Instruments by exercising self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules, the removal of pets that are in violation of pet rules, or the correction of any maintenance, construction or other violation of the Condominium Instruments) without the necessity of compliance with the procedures set forth in the By-Laws. The Association may levy a specific assessment to cover all costs incurred in bringing a Unit into compliance with the terms of the Condominium Instruments.

(d) Notwithstanding anything herein to the contrary, the Association may also take the following actions without the necessity of compliance with the procedures set forth in the By-Laws: (1) elect to enforce any provisions of the Condominium Instruments by suit at law or in equity to enjoin any violation or to recover monetary damages or both; or (2) subject to Subsection 9.3(i), terminate any water, gas, electricity, heat, or air conditioning services being provided to a Unit or Unit Owner by the Association for failure to pay assessments and other amounts due pursuant to subsection (a) of Section 35-8A-315 of the Act to the fullest extent allowed by the Act and in accordance with the provisions of the Act.

(e) All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action or remedy taken by the Association to enforce the provisions of the Condominium Instruments, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorneys' fees actually incurred and court costs in the same manner as an action for collection of assessments.

(f) The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any

such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule.

(g) The Association, by contract or other agreement, may enforce county, city, state, and federal ordinances, if applicable, and permit local and other governments to enforce ordinances on the Condominium for the benefit of the Association and its members.

8.4. Permits, Licenses, Easements, etc. The Association shall have the right to grant permits, licenses, utility easements, and other easements over, through and under the Common Elements without a vote of the Owners.

8.5. Right of Maintenance. The Association shall have the right to control, manage, operate, maintain, improve, and replace all portions of the Condominium for which the Association is assigned maintenance responsibility under this Declaration.

8.6. Property Rights. The Association shall have the right to acquire, hold and dispose of tangible and intangible personal property and real property.

8.7. Casualty Loss. The Association shall have the right to deal with the third party as attorney-in-fact for the Owners and the Association in the event of damage or destruction to any portion of the Condominium as a result of casualty loss, condemnation or eminent domain, in accordance with the provisions of the Act and this Declaration. The award made for such taking or proceeds of such casualty loss shall be payable to the Association to be held in trust for the Unit Owners and their Mortgagees, as their interests may appear.

8.8. Governmental Entities. The Association shall have the right to represent the Owners in dealing with governmental entities.

8.9. Common Elements. The Association or, during the Development Period, the Declarant shall have the right to close temporarily any portion of the Common Elements (including the Limited Common Elements) for emergency, security or safety purposes or for any such other reasonable purpose as determined in the sole discretion of the Board or Declarant, with no prior notice of such closing to the Owners, for a period not to exceed one (1) year. Furthermore, the Association shall have the right to permanently close any portion of the Common Element(s) upon thirty (30) days' prior written notice to all Owners. Any portion of the Common Elements which has been permanently closed may be reopened by the sole action of the Declarant during the Development Period, or by action of the Board, or by the vote of members holding a Majority of the Total Eligible Association Vote. Notwithstanding the above, (i) any action to reopen a portion of the Common Elements which will require, in the sole discretion of the Board, the levying of a special assessment, shall be approved in the manner set forth in Section 9.5 prior to becoming effective; and (ii) the Association may not close any portion of the Common Elements over or upon which the Declarant has an easement.

## ARTICLE 9: ASSESSMENTS

9.1. Purpose of Assessment. The Association shall have the power to levy assessments as provided herein and in the Act. The assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Units in the Condominium as may be more specifically authorized from time to time by the Board of Directors.

9.2. Creation of the Lien and Personal Obligation For Assessments. Each Owner of any Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (i) annual assessments or charges; (ii) special assessments; and (iii) specific assessments, all as herein provided. All such assessments, together with late charges, interest, costs, and reasonable attorneys' fees actually incurred, and if the Board of Directors so elects, the fair rental value of the Unit, in the maximum amount permitted by the Act, shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each assessment is made. Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien may be enforced by suit, judgment and foreclosure in the same manner as Mortgages are foreclosed under Alabama law.

Such amounts shall also be the personal obligation of each Person who was the Owner of such Unit at the time when the assessment fell due. Except as otherwise provided herein or in the Act, each Owner and each successor-in-title to the Unit shall be jointly and severally liable for all assessments and charges due and payable at the time of any conveyance. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors; unless otherwise provided, the annual assessments shall be paid in equal monthly installments due on the first day of each calendar month. No Owner may exempt him or herself from liability for or otherwise withhold payment of assessments for any reason whatsoever, including, but not limited to, non-use of the Common Elements, the Association's failure to perform its obligations required under this Declaration, or inconvenience or discomfort arising from the Association's performance of its duties. The lien provided for herein shall have priority as provided in the Act.

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

(a) If any monthly installment of annual assessments or any part thereof is not paid in full when due or if any other charge is not paid when due, a late charge equal to the greater of Ten Dollars (\$10.00) or ten percent (10%) 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 highest rate as permitted by the Act and adopted by resolution of the Board of Directors shall accrue from the due date.

(b) If partial payment of assessments and related charges is made, the amount received shall be applied in the following order, and no restrictive language on any check or draft shall be effective to change the order of application:

(c) respectively, to any unpaid late charges, interest charges, and specific assessments (including, but not limited to, fines) in the order of their coming due;

(d) to costs of collection, including reasonable attorneys' fees actually incurred by the Association;

(e) to any unpaid installments of the annual assessment or special assessments in the order of their coming due; and

(f) if the Board of Directors so elects, to the fair rental value of the Unit during the pendency of suit and prior to satisfaction of any judgment which remains unpaid. The fair rental value of the Units, for purposes of this Section, shall be as established from time to time by the Board of Directors.

(g) If assessments, fines or other charges or any part thereof due from an Owner are not paid when due, a notice of delinquency may be given to that Owner stating that if the assessment, fine or charge remains delinquent for more than ten (10) days from the date of the notice of delinquency, the Board of Directors may accelerate and declare immediately due all of that Owner's unpaid installments of the annual assessment and of any special assessment. If an Owner fails to pay all assessments and related charges currently due within ten (10) days of the date of the notice of delinquency, the Board of Directors may then accelerate and declare immediately due all installments of the annual assessment and of any special assessment, without any further notice being given to the delinquent Owner. Upon acceleration, that Owner shall lose the privilege of paying the annual assessment in monthly installments for that fiscal year.

(h) If assessments and other charges or any part thereof remain unpaid more than thirty (30) days after the assessment payments first become delinquent, the Association may institute suit to collect all amounts due pursuant to the provisions of the Declaration, the By-Laws, the Act, and Alabama law and suspend the Owner's and/or Occupant's right to use the Common Elements; provided, however, the Board of Directors may not limit ingress or egress to or from the Unit.

(i) In the event any assessment is delinquent for thirty (30) days or more, in addition to all other rights provided in the Act and this Declaration, the Association shall have the right upon ten (10) days written notice, to suspend any utility services, the cost of which are a Common Expense of the Association, including, but not limited to, water, electricity, heat, air conditioning, gas and cable television, to that Unit until such time as the delinquent assessments and all costs permitted pursuant to this Section are paid in full. Any costs incurred by the Association in discontinuing and/or reconnecting any utility service, including reasonable attorneys' fees, shall be an assessment against the Unit and shall be collected as provided herein for the collection of assessments. The notice requirement of this Section shall be deemed complied with if the notice is sent by certified mail to the Unit address and to any other address the Owner of the Unit has provided in writing to the Association.

9.4. Computation of Operating Budget and Assessment. It shall be the duty of the Board at least sixty (60) days prior to the beginning of the Association's fiscal year to prepare and adopt a proposed budget covering the estimated costs of operating the Condominium during the coming year. Within thirty (30) days after adoption of any proposed budget, the Board shall provide a copy of same and notice of the assessments to be levied against each Unit for the following year to be delivered to each member, and shall set a date for a meeting of the members to consider the budget not less than fourteen (14) nor more than thirty (30) days after delivery or mailing of the budget to the members. The budget and the assessment shall become ratified unless disapproved at that meeting by members holding a Majority of the Total Eligible Association Vote; provided, however, that if a quorum is not obtained at such meeting, the budget shall become effective and ratified even though a vote to disapprove the budget could not be called at the meeting.

In the event that the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. In such case, the Board may propose a new budget at any time during the year at a special meeting of the Association. The proposed budget and assessment shall be delivered to the members at least thirty (30) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to budgets considered at special meetings.

9.5. Special Assessments. The Board of Directors may, at any time, and in addition to any other rights it may have, levy a special assessment against all Owners, notice of which shall be sent to all

Owners. Any special assessment which would cause the average total of special assessments levied in one fiscal year to exceed the amount of the annual assessment for such year (except as provided herein regarding repair or reconstruction of casualty damage to or destruction of all or part of the Condominium) shall be approved by members holding a Majority of the Total Eligible Association Vote prior to becoming effective. Notwithstanding the above, during the Development Period, all special assessments must be consented to by the Declarant prior to becoming effective.

9.6. Specific Assessments. The Board shall have the power to specifically assess expenses of the Association against Units (a) receiving benefits, items, or services not provided to all Units within the Condominium that are incurred upon request of the Owner of a Unit for specific items or services relating to the Unit or (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees or guests. The Association may also levy or specifically assess any Unit to reimburse the Association for costs incurred in bringing the Unit into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws, and rules, provided the Board gives prior notice to the Unit Owner and an opportunity for a hearing as set forth in Section 3.23 of the By-Laws.

9.7. Capital Budget and Contribution. The Board shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the Association, as shown on the capital budget, with respect both to amount and timing by equal annual assessments over the period of the budget. The capital contribution required, if any, shall be established by the Board and included within the budget and assessment as provided in Section 9.4. A copy of the capital budget shall be distributed to each member in the same manner as the operating budget.

Notwithstanding any other provisions of this Declaration, during the time in which the Declarant appoints the directors of the Association pursuant to Article 20 of this Declaration, the Declarant (a) may collect a non-refundable contribution to the capital fund of the Association from the initial purchaser of each Unit in the amount of two (2) months of the annual assessment for the Unit (in addition to those amounts set forth in Section 9.9), and (b) shall not be required to prepare a capital budget, set any other capital contribution, or otherwise collect amounts for capital reserves. Any capital contribution collected by the Declarant shall not be collected against a Mortgagee which takes title to a Unit pursuant to foreclosure.

9.8. Statement of Account. Any Owner, Mortgagee, or a Person having executed a contract for the purchase of a Unit, or a lender considering a loan to be secured by a Unit, shall be entitled, upon written request, to a statement from the Association setting forth the amount of assessments due and unpaid, including any late charges, interest, fines, or other charges against a Unit. The Association shall respond in writing within ten (10) business days of receipt of the request for a statement; provided, however, that the Association may require the payment of a reasonable fee not to exceed Ten Dollars (\$10.00), or such higher amount as may be authorized by the Act, as a prerequisite to the issuance of such a statement. Such written statement shall be binding on the Association as to the amount of assessments due on the Unit as of the date specified therein.

9.9. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to two (2) months of the annual assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association into a separately designated amount. The

Association may not use these funds during the period that the Declarant has the right to appoint the directors of the Association. Thereafter, the Association may use the funds to cover unforeseen expenditures or to purchase any additional equipment or services. The working capital contribution set forth herein is in addition to the required capital contribution set forth in Section 9.7 of this article.

9.10. Surplus Funds and Common Profits. Common profits from whatever source shall be applied to the payment of Common Expenses. Any surplus funds remaining after the application of such common profits to the payment of Common Expenses shall, at the option of the Board of Directors, either be distributed to the Owners or credited to the next assessment chargeable to the Owners in proportion to the liability for Common Expenses attributable to each Unit, or added to the Association's reserve account.

9.11. Commencement of Assessments. The obligation to pay full assessments shall commence as to each Unit no later than sixty (60) days after the first Unit is conveyed by the Declarant to an Owner other than a Person or Persons constituting the Declarant.

#### ARTICLE 10: INSURANCE

10.1. Insurance. The Association shall obtain and maintain at all times, as a Common Expense, casualty, liability and other insurance required by Section 35-8A-313 of the Act and as required herein. All such insurance coverage shall be written in the name of the Association as trustee for itself, each of the Owners, and the Mortgagees of Owners, if any. It shall be the duty of the Board of Directors at least every three (3) years to conduct an insurance review to determine if the policy in force is adequate to meet the needs of the Association and to satisfy the requirements of this Declaration and Section 35-8A-313 of the Act. Such responsibility may be performed, and shall be deemed reasonably performed, by requesting the Association's insurance agent to verify that insurance policies in existence meet the needs of the Association and satisfy the requirements of this Declaration and Section 35-8A-313 of the Act. Such insurance shall run to the benefit of the Association, the respective Unit Owners, and their respective Mortgagees, as their interests may appear. The Association's policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance equals at least the full replacement cost.

(a) To the extent reasonably available at reasonable cost, the Association's insurance policy may, but shall not be required to, cover any of the following types of property contained within a Unit, regardless of ownership:

(i) fixtures, improvements and alterations that are part of the building or structure; and

(ii) appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security, or housekeeping.

If such insurance is not reasonably available, the Association's insurance policy may exclude improvements and betterments made by or on behalf of the individual Unit Owners and may also exclude the finished surfaces of perimeter and partition walls, floors, and ceilings within the Unit (i.e., paint, wallpaper, paneling, other wall covering, tile, carpet, and any floor covering), but each Owner shall have the right to obtain additional coverage for such improvements, betterments or personal property at his or her own expense.

(b) The Board of Directors shall utilize every reasonable effort to secure a master policy covering physical damage in an amount equal to full replacement costs of all improvements located on the Condominium that will provide the following:

(i) that the insurer waives its rights of subrogation of any claims against the Board of Directors, officers of the Association, the individual Owners, Occupants and their respective invitees and Occupants of the Unit;

(ii) that the master policy on the Condominium cannot be canceled, invalidated, or suspended on account of the conduct of any Unit Owner, director, officer or employee of the Association or the managing agent without a prior demand in writing delivered to the Association and to all Mortgagees of Units to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured;

(iii) that any "no other insurance" clause contained in the master policy shall expressly exclude individual Unit Owners' policies from its operation;

(iv) that until the expiration of thirty (30) days after the insurer gives notice in writing to the Mortgagee of any Unit, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Unit, the other Unit Owners, the Board of Directors, or any of their agents, employees, Occupants, or invitees, nor be canceled for nonpayment of premiums;

(v) that the master policy may not be canceled, substantially modified or subject to non-renewal without at least thirty (30) days prior notice in writing to the Board of Directors and all Mortgagees of Units;

(vi) a construction code endorsement;

(vii) an agreed value endorsement and an inflation guard endorsement; and

(viii) that the deductible amount per occurrence shall not exceed such amount as determined by the Board.

(c) All policies of insurance shall be written with a company licensed to do business in the State of Alabama and holding a rating of XI or better in the Financial Category as established by A.M. Best Company, Inc., if available, or, if not available, the best rating available. The company shall provide insurance certificates to each Owner and each Mortgagee upon request.

(d) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, that no Mortgagee having an interest in such losses shall be prohibited from participating in the settlement negotiations, if any, related thereto.

(e) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Unit Owners or their Mortgagees. Each Unit Owner shall notify the Board of Directors of all structural improvements made by the Unit Owner to his Unit. Any Unit Owner who obtains an individual insurance policy covering any portion of the Condominium, other than improvements and betterments made by such Owner, shall file a copy of such individual policy or policies with the Board of Directors within thirty

(30) days after the purchase of such insurance. Such Owner shall also promptly notify, in writing, the Board of Directors in the event such policy is canceled.

(f) In addition to the insurance required herein above, the Board shall obtain as a Common Expense:

(i) worker's compensation insurance if and to the extent necessary to meet the requirements of law;

(ii) public liability and officers' and directors' liability insurance in such amounts as the Board may determine, but in no event less than One Million Dollars (\$1,000,000.00) per occurrence (such insurance shall contain a cross liability endorsement);

(iii) fidelity bonds, if reasonably available, covering officers, directors, employees, and other persons who handle or are responsible for handling Association funds. Such bonds, if reasonably available, shall be in an amount which in the best business judgment of the Board of Directors reflects the estimated maximum amount of funds, including reserve funds in the custody of the Association at any time during the term of the bond, but not less than two (2) months' aggregate assessments plus reserves on hand as of the beginning of the fiscal year, and shall contain waivers of any defense based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; provided, however, that fidelity coverage herein required may be reduced based on the implementation of financial controls which take one or more of the following forms: (1) 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 the funds are deposited sends copies of the bank statements directly to the Association; (2) 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 (3) two members of the Board of Directors must sign any check written on the reserve account;

(iv) flood insurance, to the extent that it is required by law or the Board determines it to be necessary; and

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

(g) Insurance carried by the Association as a Common Expense shall not be required to include any portion of a Unit not depicted on the Plat and Plans, nor shall the Association include public liability insurance for individual Owners for liability arising within the Unit. Nothing contained herein gives any Owner or other party a priority over the rights of first Mortgagees as to distribution of insurance proceeds.

(h) Every Unit Owner shall be obligated to obtain and maintain at all times insurance covering those portions of his or her Unit to the extent not insured by policies maintained by the Association. Upon request by the Board, the Unit Owner shall furnish a copy of such insurance policy or policies to the Association within thirty (30) days from the date of such request. In the event that any such Unit Owner fails to obtain insurance or to provide copies of the policy or policies as required by this section, the Association may purchase such insurance on behalf of the Unit Owner and assess the cost thereof to the Unit Owner, to be collected in the manner provided for collection of assessments under Article 9 hereof.

(i) In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the Person or Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit, or both Unit(s) and the Common Elements, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected owner's portion of the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Unit separately or to each occurrence, each Unit Owner shall be responsible for paying the deductible pertaining to his or her Unit, if any. If any Owner or Owners fail to pay the deductible when required under this section, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to Article 7 of this Declaration; provided, however, where the deductible is for insurance required under the Act, no Owner shall be assigned more than One Thousand Dollars (\$1,000.00), or such higher amount as may be authorized under the Act, as the cost of the deductible for any one occurrence.

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

#### **ARTICLE 11: REPAIR AND RECONSTRUCTION**

In the event of damage to or destruction of all or any part of the Condominium insured by the Association as a result of fire or other casualty, unless (1) Unit Owners entitled to cast eighty percent (80%) of the Total Eligible Association Votes and Eligible Mortgagees representing at least fifty-one percent (51%) of the votes of Units subject to a Mortgage held by an Eligible Mortgagee appertain, vote not to proceed with the reconstruction and repair of the structure, or (2) as otherwise provided by Section 35-8A-313 of the Act, the Board of Directors or its duly authorized agent shall arrange for and supervise the prompt repair and restoration of the structure.

11.1. Cost Estimates. Immediately after a fire or other casualty causing damage to the Condominium, the Board of Directors shall obtain reliable and detailed estimates of the cost of repairing and restoring the structures (including any damaged Unit) to substantially the condition which existed before such casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Such costs may also include professional fees and premiums for such bonds as the Board of Directors determines to be necessary.

11.2. Source and Allocation of Proceeds. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair, as determined by the Board, or, if at any time during reconstruction and repair or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, the additional costs shall be assessed against all Owners in proportion to each Owner's respective undivided interest in the Common Elements. This assessment shall not be considered a special assessment. If there is a surplus of funds after repair and reconstruction is completed, or if the Unit Owners and Eligible Mortgagees vote not to proceed with reconstruction or repair as set forth herein, such funds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium, the insurance proceeds attributable to Units and Limited Common Elements that are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were assigned, or to their mortgagees, as their interests may appear, and the remainder of the proceeds shall be distributed to all Unit Owners as their interests may appear.

11.3. Plans and Specifications. Any such reconstruction or repair shall be substantially in accordance with the plans and specifications under which the Condominium was originally constructed, except where changes are necessary to comply with current applicable building codes or where improvements not in accordance with the original plans and specifications are approved by the Board of Directors. To the extent insurance proceeds are available, the Association may reconstruct or repair Owner improvements damaged as a result of fire or other casualty. If any modifications to the exterior are proposed, approval must be obtained by the ARB prior to construction of any modifications to the original plans and specifications.

11.4. Encroachments. Encroachments upon or in favor of Units which may be created as a result of such reconstruction or repair shall not constitute a claim or basis for any proceeding or action by the Unit Owner upon whose property such encroachment exists, provided that such reconstruction was substantially in accordance with the architectural plans under which the Condominium was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the reconstructed building shall stand.

11.5. Construction Fund. The net proceeds of the insurance collected on account of a casualty and the funds collected by the Association from assessments against Unit Owners on account of such casualty shall constitute a construction fund which shall be disbursed in payment of the cost of reconstruction and repair in the manner set forth in this Section to be disbursed by the Association in appropriate progress payments to such contractor(s), supplier(s) and personnel performing the work or supplying materials or services for the repair and reconstruction of the buildings as are designated by the Board of Directors.

## ARTICLE 12: ARCHITECTURAL CONTROL

12.1. Architectural Standards. Except for the Declarant, and except as provided herein, no Owner, Occupant, or any other Person may make any encroachment onto the Common Elements or Limited Common Elements, or make any exterior change, alteration or construction (including painting and landscaping), nor erect, place or post any object, sign, antenna, playground equipment, light (except for reasonable seasonal decorative lights), storm door or window, artificial vegetation, exterior sculpture, fountain, flag, or thing on the exterior of the buildings, in any windows, on any Limited Common Elements, or any other Common Elements, without first obtaining the written approval of the ARB.

The standard for approval of such improvements shall include, but not be limited to, aesthetic consideration, materials to be used, harmony with the external design of the existing buildings and the location in relation to surrounding structures and topography. Applications for approval of any such architectural modification shall be in writing and shall provide such information as the ARB may reasonably require. The ARB or its designated representative shall be the sole arbiter of such application and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction which is not in conformance with approved plans. The Board of Directors or the ARB may publish written architectural standards for exterior and Common Elements alterations or additions, and any request in substantial compliance therewith shall be approved; provided, however, each such requested change shall be in harmony with the external design of the existing buildings and Units and the location in relation to surrounding structures and topography. The ARB may allow such encroachments on the Common Elements and Limited Common Elements as it deems acceptable.

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

the requirements of this section are satisfied, nothing herein shall authorize anyone to construct or maintain any structure or improvement that is otherwise in violation of the Condominium Instruments.

12.2. Architectural Review Board. The ARB shall have exclusive jurisdiction over all construction on any portion of the Condominium. During the Development Period, the Declarant retains the right to appoint and remove all members of the ARB, who shall serve at the Declarant's discretion. The ARB shall consist of one (1) to three (3) members, with the exact number being set from time to time by and in the sole discretion of the Declarant for so long as the Declarant retains the right to appoint and remove ARB members. There shall be no surrender of these rights prior to their expiration as provided above, except in a written instrument in recordable form executed by Declarant; provided, however, that the Declarant may delegate certain authority of the ARB to the Association for such periods of time as the Declarant in its sole discretion may decide. Upon expiration or permanent surrender of such rights, the Board shall set the number of members of the ARB and appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

12.3. Condition of Approval. As a condition of approval for a requested architectural change, modification, addition, or alteration, an Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance of such change, modification, addition, or alteration. In the discretion of the ARB, an Owner may be required to verify such condition of approval by written instrument in recordable form acknowledged by such Owner.

12.4. Limitation of Liability. Review and approval of any application pursuant to this article is made on the basis of aesthetic considerations only and neither the Declarant, the Association, the Board of Directors, nor the ARB shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board of Directors, the ARB, nor members of any of the foregoing shall be held liable for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Unit.

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

12.6. Enforcement. Any construction, alteration, or other work done in violation of this article shall be deemed to be nonconforming. Upon written request from the Board of Directors or the ARB, Owners shall, at their own cost and expense, remove such construction, alteration, or other work and shall restore the property to substantially the same condition as existed prior to the construction, alteration or other work. Should an Owner fail to remove and restore as required hereunder, the ARB shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as existed prior to the construction, alteration or other work. All costs thereof, including reasonable attorneys' and other legal fees, may be assessed against the Unit and collected as an assessment pursuant to this Declaration. In addition to the foregoing, the ARB 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 its decisions and the provisions of this article. Any exterior change, alteration, or construction (including landscaping) upon the Common Elements made by an Owner in violation of this Declaration shall be at such Owner's sole risk and expense. The Board of

Directors or the ARB may require that the Owner remove the change, alteration or construction and restore the Common Elements to its original condition, or may require that the change, alteration or construction remain on the Common Elements without reimbursement to the Owner for any expense incurred in making the change, alteration or construction.

#### ARTICLE 13: USE RESTRICTIONS

Each Owner of a Unit shall be responsible for ensuring that the Owner's family, invitees, guests, tenants, and Occupants comply with all provisions of the Condominium Instruments and the rules and regulations of the Association. Furthermore, each Owner and Occupant shall always endeavor to observe and promote the cooperative purposes for which the Association was established. In addition to all rights the Association may have against the Owner's family, invitees, guests, tenants, or Occupants, as a result of such Person's violation of the Condominium Instruments, the Association may take action under this Declaration against the Owner as if the Owner committed the violation in conjunction with the Owner's family, invitees, guests, tenants, or Occupants. Use restrictions regarding the use of Units and the Common Elements are as follows and also as may be adopted by the Board of Directors in accordance with the terms hereof and as specified in the By-Laws.

13.1. Residential Use. All Units which may be created within the Condominium may be used only for residential purposes of a single family and for ancillary business or home office uses. A business or home office use shall be considered ancillary so long as: (a) the existence or operation of the activity is not apparent or detectable by sight, sound or smell from outside the Unit; (b) the activity conforms to all zoning requirements for the Condominium; (c) the activity does not involve regular visitation of the Unit by persons (including, but not limited to, clients, customers, employees, advisors, suppliers, or independent contractors) coming onto the Condominium who do not reside in the Condominium, or door-to-door solicitation of residents of the Condominium; (d) the activity does not increase traffic or include frequent deliveries within the Condominium other than deliveries by couriers, express mail carriers, parcel delivery services, and other such delivery services; (e) the activity is consistent with the primarily residential character of the Condominium and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium, as may be determined in the sole discretion of the Board; (f) the business activity does not increase the insurance premium paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (g) there are no signs, advertisements or plaques of any nature whatsoever visible from the exterior of the Unit; and (h) the business activity does not result in a materially greater use of Common Element 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: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Unit shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a builder approved by the Declarant with respect to its development and sale of the Condominium or portions thereof, or its use of any Units which it owns within the Condominium.

No Unit may be used as a rooming house, hostel, hotel, or for timesharing, except as may be established by Declarant. The term "timesharing" shall be deemed to include, but shall not be limited to, any agreement, plan, program, or arrangement under which the right to use, occupy, or possess all or any

portion of a Unit rotates among various Persons on a periodically recurring basis for value exchanged, whether monetary or like kind use privileges, according to a fixed or floating interval or period of time of thirty (30) consecutive calendar days or less.

13.2. Alteration of Units. Subject to the other provisions of this Declaration, Unit Owners may make alterations to the interiors of their Units, relocate the boundaries between adjoining Units, and subdivide their Units as follows:

(a) Alterations of the Interiors of the Units. If any Owner acquires an adjoining Unit, such Owner may (subject to the prior written approval of the Mortgagees of the Units involved, the prior written approval of the Board, and, during the Development Period, the prior written approval of the Declarant) remove all or any part of any intervening partition or to create doorways or other apertures therein, notwithstanding the fact that such partition may, in whole or part, be part of the Common Elements, so long as no portion of any load bearing wall or column is materially weakened or removed and no portion of any Common Elements is damaged, destroyed or endangered, other than that partition and any chutes, flues, ducts, conduits, wires or other apparatus contained therein which shall be relocated by such Owner if such facilities serve any other part of the Condominium. The alterations permitted by this subsection shall not be deemed an alteration or relocation of boundaries between adjoining Units, as defined by Section 35-8A-212 of the Act.

(b) Relocation of Boundaries. Boundaries between adjoining Units may be relocated in accordance with the provisions of Section 35-8A-212 of the Act and, during the Development Period, with the prior written consent of the Declarant. The Declarant shall have the right to relocate boundaries between any Units owned by the Declarant or its affiliates without the approval of the Association, and the Declarant, without the need for further Owner approval, may execute any required amendment to the Declaration on the Association's behalf pertaining thereto.

(c) Subdivision of Units. An Owner may subdivide his or her Unit in accordance with the provisions of Section 35-8A-213 of the Act and this Declaration. During the Development Period, an Owner must obtain the prior written consent of the Declarant in order to subdivide his or her Unit. After the Development Period has terminated, an Owner must obtain the prior written consent of the Board of Directors in order to subdivide his or her Unit.

Notwithstanding the above, the Declarant shall have the right to subdivide Units owned by it or by its affiliates without the approval of the Association, and the Declarant, without the need for further Owner approval, may execute any regulated amendment to the Declaration pertaining thereto as attorney-in-fact on behalf of the Association.

An amendment to the Declaration for the purpose of subdividing one (1) or more Units shall assign identifying numbers to the Units created by the subdivision and shall allocate among those Units on a reasonable basis to the subdivider and the Board all of the undivided interest in the Common Elements, votes in the Association, and liabilities for Common Expenses pertaining to the subdivided Unit immediately prior to the subdivision. With regard to any Limited Common Elements assigned to the subdivided Unit, the Units created by the subdivision shall jointly share all rights and shall be liable equally for all obligations so that the total of the assessments therefor equals the total of the Common Expenses attributable to such Limited Common Elements, except to the extent that the subdivider may have specified in his or her application for subdivision that all or any portion or portions of any Limited Common Element assigned to the subdivided Unit should be assigned exclusively to one (1) or more, but less than all, of the Units created by the subdivision, in which case the amendment to the Declaration shall reflect the desires of the subdivider as expressed in the application.

13.3. Outbuildings. No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected by any Owner or Occupant on any portion of the Condominium, other than by Declarant, at any time, either temporarily or permanently, without the prior written approval required under Article 12.

13.4. Use of Common Elements. There shall be no obstruction of the Common Elements, nor shall anything be kept on, parked on, stored on, or removed from any part of the Common Elements without the prior written consent of the Board, except as specifically provided herein. This prohibition shall not apply to the Declarant.

With the prior written approval of the Board, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Elements for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Elements as provided herein shall assume, on behalf of himself/herself/themselves and his/her/their guests, Occupants and family, all risks associated with the use of the Common Elements and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

13.5. Use of Limited Common Elements. Use of the Limited Common Elements is restricted exclusively to the Owners of the Unit to which such Limited Common Elements are assigned, and said Owner's family members, guests, invitees, and Occupants. The Limited Common Elements are reserved for exclusive use, but are a part of the Common Elements, and the restrictions applicable to the Common Elements shall also apply to the Limited Common Elements.

13.6. Prohibition of Damage, Nuisance and Noise. Without the prior written consent of the Board, nothing shall be done or kept on the Condominium, or any part thereof, which would increase the rate of insurance on the Condominium or any Unit or part thereof, which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirements of any governmental body, or which would increase the Common Expenses.

Noxious, destructive or offensive activity shall not be carried on upon the Condominium. No Owner or Occupant of a Unit may use or allow the use of the Unit or any portion of the Condominium at any time, in any way or for any purpose which may endanger the health or unreasonably annoy or disturb or cause embarrassment, discomfort, or nuisance to other Owners or Occupants, or in such a way as to constitute, in the sole opinion of the Board of Directors, a nuisance. Nothing herein, however, shall be construed to affect the rights of an aggrieved Owner to proceed individually for relief from interference with his or her property or personal rights. Notwithstanding anything to the contrary herein, no Owner or Occupant may use or allow the use of the Unit, the Common Elements or the Limited Common Elements in any manner which creates noises between the hours of 10:00 p.m. and 7:00 a.m. which can be heard by persons in another Unit that will, in the sole discretion of the Board, interfere with the rights, comfort or convenience of the other Owners or Occupants.

No Owner shall do any work which, in the reasonable opinion of the Board or its designee, would jeopardize the soundness or safety of the Condominium or any structure created thereon, would reduce the value thereof, or would impair any easement or other interest in real property thereto, without in every such case the unanimous, prior written consent of all members of the Association and their Mortgagees. No damage to or waste of the Common Elements, or any part thereof, or of the exterior of any building shall be permitted by any Owner or member of his or her family or any invitee or guest of any Owner. Each Owner shall indemnify and hold the Association and the other Owners harmless against all loss to

the Association or other Owners resulting from any such damage or waste caused by such Owner, members of his or her family, guests, invitees, or Occupants of his or her Unit.

13.7. Firearms and Fireworks. The display or discharge of firearms or fireworks on the Common Elements is prohibited; provided, however, that the display of lawful firearms on the Common Elements is permitted for the limited purpose of transporting the firearms across the Common Elements to or from the Owner's Unit. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

13.8. Pets. No Owner or Occupant may keep more than a total of two (2) (in any combination) dogs or cats. An Owner or Occupant may keep in his or her Unit a number of smaller, generally recognized household pets, such as fish or hamsters, subject to such rules and regulations as may be adopted by the Board. No Owner or Occupant may keep, breed or maintain any pet for any commercial purpose. All pets shall be reasonably controlled by the Owner or Occupant whenever outside a Unit and shall be kept in such a manner as not to become a nuisance by barking or other acts. Pets may not be left unattended outdoors or kept unattended outdoors, including, but not limited to, on any balcony, deck or backyard area. Dogs must be kept on a leash and be under the physical control of a responsible person at all times while on the Common Elements. The owner of the pet or the Person responsible for the pet must immediately remove any feces left upon the Common Elements, specifically including, but not limited to, feces left on Limited Common Elements.

No potbellied pigs, venomous snakes, pit bulldogs or other animals determined in the Board's sole discretion to be dangerous, may be brought onto or kept on the Condominium at any time. The Board may require that any pet which, in the Board's opinion, endangers the health of any Owner or Occupant or creates a nuisance or unreasonable disturbance, be permanently removed from the Condominium upon seven (7) days written notice. If the Owner or Occupant fails to do so, the Board may remove the pet. Any pet which, in the Board's sole discretion, presents an immediate danger to the health, safety or property of any community member may be removed by the Board without prior notice to the pet's owner.

Any Owner or Occupant who keeps or maintains any pet upon the Condominium shall be deemed to have agreed to indemnify and hold the Association, its directors, officers and agents free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Condominium.

The Board may allow, in its sole discretion, for a disabled Owner or Occupant to keep a service animal in his or her Unit for the benefit of a disabled Owner or Occupant; provided, however, that the foregoing rules related to pets shall also apply to any service animal kept or maintained within the Condominium.

13.9. Parking. Units may have one or more parking spaces assigned as Limited Common Elements exclusively serving a particular Unit. Such assigned spaces may only be used by the Owner or Occupants to whom the spaces are assigned, and their guests and families. During the Development Period, the Declarant may sell more parking spaces to a Unit Owner and may adopt rules regulating the use of unassigned parking spaces. Vehicles may only be parked in designated, lined parking spaces or in other areas authorized in writing by the Declarant during the Development Period and, thereafter, by the Board.

Disabled and stored vehicles are prohibited from being parked on the Condominium. For purposes hereof, a vehicle shall be considered "disabled" if it does not have a current license tag or is

obviously inoperable. A vehicle shall be considered "stored" if it remains on the Condominium without being driven for fourteen (14) consecutive days or longer without prior written Board permission.

Boats, trailers, panel trucks, buses, trucks with a load capacity of one (1) ton or more, vans (excluding mini-vans or utility vehicles used as passenger vehicles and receiving a "car" or "passenger vehicle" classification by the Alabama Department of Motor Vehicles), recreational vehicles (RVs and motor homes), vehicles used primarily for commercial purposes, and vehicles with commercial writings on their exteriors are also prohibited from being parked on the Condominium, except in areas designated by the Declarant during the Development Period and, thereafter, by the Board, as parking areas for particular types of vehicles. Notwithstanding the above, trucks, vans, commercial vehicles, and vehicles with commercial writings on their exteriors shall be allowed temporarily on the Common Elements during normal business hours for the purpose of serving any Unit or the Common Elements, but no such vehicle shall remain on the Common Elements overnight or for any purpose except serving a Unit or the Common Elements, without written consent of the Declarant during the Development Period and, thereafter, the written consent of the Board.

If any vehicle is parked on any portion of the Condominium in violation of this Section 13.9 or in violation of the Association's rules and regulations, the Declarant, during the Development Period, and, thereafter, the Board, may place a notice on the vehicle specifying the nature of the violation and stating that after twenty-four (24) hours the vehicle may be towed. The notice shall include the name and telephone number of the person or entity which will do the towing and the name and telephone number of a person to contact regarding the alleged violation. If, twenty-four (24) hours after such notice is placed on the vehicle, the violation continues or thereafter occurs again within six (6) months of such notice, the vehicle may be towed in accordance with the notice, without further notice to the Owner or user of the vehicle.

If a vehicle is parked in a fire lane, is blocking another vehicle or access to another Owner's or Occupant's Unit, is obstructing the flow of traffic, is parked other than in a parking space, is parked in a space which has been assigned as a Limited Common Element exclusively serving another Unit, or otherwise creates a hazardous condition, no notice shall be required and the vehicle may be towed immediately. If a vehicle is towed in accordance with this section, neither the Declarant, the Association, nor any officer or agent of either shall be liable to any Person for any claim of damage as a result of the towing activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow.

13.10. Abandoned Personal Property. Personal property, other than vehicles as provided for in this article, shall not be kept or allowed to remain for more than twenty-four (24) hours upon any portion of the Common Elements, other than on Limited Common Elements, without the prior written permission of the Board.

If the Board or its designee, in its sole discretion, determines that property is kept, stored, or allowed to remain on the Common Elements or Limited Common Elements in violation of this section, then the Board may remove and either discard or store the personal property in a location which the Board may determine. Prior to taking any such action, the Board shall place a notice on the personal property and/or on the front door of the Unit of the owner of such property, if known, specifying the nature of the violation and stating that after two (2) days the property may be removed and either discarded or stored. 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.

If two (2) days after such notice is placed on the personal property and/or the front door of the Unit, the violation continues or thereafter occurs again within six (6) months of such notice, the personal

property may be removed in accordance with the original notice, without further notice to the owner or user of the personal property.

Notwithstanding anything to the contrary, the Board, in its discretion, may determine that an emergency situation exists, and the personal property abandoned or stored in violation of this section may, without prior notice to the owner or user of the personal property, be removed and either discarded or stored by the Board in a location which the Board may determine; provided, however, the Board shall give to the owner, if known, notice of the removal of the property and the location of the personal property within three (3) days after the personal property is removed.

If personal property is removed in accordance with this section, neither the Association nor any officer or agent of the Association shall be liable to any Person for any claim of damage resulting from the removal activity. Notwithstanding anything to the contrary herein, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to remove abandoned or improperly stored personal property, as set forth herein.

13.11. Heating of Units in Colder Months. In order to prevent breakage of water pipes during colder months of the year resulting in damage to any portion of the Condominium, increased Common Expenses, and increased insurance premiums or cancellation of insurance policies due to numerous damage claims, the thermostats within the Units shall be maintained with the heat in an "on" position and at a minimum temperature setting of fifty-five degrees (55°) Fahrenheit (except during power failures or periods when heating equipment is broken) whenever the temperature is forecasted to or does reach thirty-two degrees (32°) Fahrenheit or below. Owners and Occupants shall take all steps possible on a timely basis to keep heating equipment, including, but not limited to, the thermostat, in good working order and repair. At any time during the months specified above when the heating equipment is not working properly, the Owner or Occupant shall immediately inform the Association of this failure of the equipment and of the time needed to repair the equipment. The Board of Directors may fine any Owner or Occupant and/or may cause the water service to the violator's Unit to be discontinued for violation of this section, in addition to any other remedies of the Association. Any fine imposed pursuant to this section shall be deemed an assessment against the Unit and may be collected in the same manner as provided herein for collection of assessments.

13.12. Signs. Except as may be required by legal proceedings, no signs, advertising posters, billboards, canopy or awnings, or any variation of the foregoing of any kind shall be erected, placed, or permitted to remain on the Condominium without the prior written consent of the Board or its designee. The Board shall have the right to erect reasonable and appropriate signs on behalf of the Association and to enact reasonable rules and regulations governing the general placement of signs on the Condominium.

Notwithstanding the restrictions contained in this section, the Declarant may approve and erect signs for the purpose of carrying on business related to the development, improvement and sale of Units in the Condominium, and such signs shall not be subject to approval or regulation by the Association or by the Board.

13.13. Rubbish, Trash, and Garbage. All rubbish, trash, and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate therein. No garbage or trash shall be placed on the Common Elements or Limited Common Elements outside the Unit, temporarily or otherwise, except as provided herein. Rubbish, trash and garbage shall be disposed of in closed plastic bags and placed in proper receptacles designated by the Board for collection or shall be removed from the Condominium.

13.14. Impairment of Units and Easements. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another Unit or impair any easement or other interest in real

property, nor do any act nor allow any condition to exist which will adversely affect the other Units or their Owners or Occupants.

13.15. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, which might tend to cause disorderly, unsightly or unkempt conditions including, but not limited to, the assembly or disassembly of motor vehicles or other mechanical devices, shall not be pursued or undertaken on any part of the Condominium. Clothing, bedding, rugs, mops, appliances, indoor furniture, and other household items shall not be placed or stored outside the Unit.

13.16. Window Treatments. Unless otherwise approved in writing by the ARB, all windows in Units shall have window treatments, and any portion thereof visible from outside the Unit shall be white or off-white in color.

13.17. Antennas and Satellite Equipment. Unless otherwise approved in writing by the Board, no Owner, Occupant, or any other Person shall place or maintain any type of exterior television or radio antenna, or satellite equipment on the Condominium. This provision shall not, however, prohibit the Association from constructing or maintaining a central antenna or communications system on the Condominium for the benefit of its members. Notwithstanding the foregoing, the Association shall regulate antennas, satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind only in strict compliance with all federal laws and regulations.

13.18. Garage Sales. Garage sales, yard sales, flea markets, or similar activities are prohibited.

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

13.20. Transient Tenants. Except for any areas owned by the Association and made available to Owners and their family and guests for overnight stays, no transient tenants or Occupants shall be accommodated in a Unit.

13.21. Number of Occupants. The maximum number of Occupants in a Unit shall be limited to two (2) natural persons per bedroom. "Occupancy," for purposes hereof, shall be defined as staying overnight in a Unit for a total of more than thirty (30) days, either consecutive or nonconsecutive, in any calendar year. Upon written application, the Board shall grant variances to this restriction if necessary to comply with provisions of the Fair Housing Amendments Act of 1988, 42 U.S.C. § 3601, *et seq.*, or any amendments thereto.

#### **ARTICLE 14: LEASING**

The Board shall have the power to make and enforce reasonable rules and regulations and to fine, in accordance with the Declaration and By-Laws, in order to enforce the provisions of this article.

14.1. Definition. "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any Person or Persons other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument.

14.2. Leasing Provisions. Leasing of Units shall be governed by the following provisions:

(a) General. Units may be leased only in their entirety; no fraction or portion may be leased without prior written approval of the Board. All rentals must be for an initial term of no less than one (1) year. All leases shall be in writing and in a form approved by the Board prior to the effective date of the lease. The Board may maintain and, upon request, provide a form which is deemed acceptable. There shall be no subleasing of Units or assignment of leases unless prior written approval is obtained from the Board of Directors. Within seven (7) days after executing a lease agreement for the lease of a Unit, the Unit Owner shall provide the Board of Directors with a copy of the lease and the name of the lessee and all other people occupying the Unit. The Unit Owner must make available to the lessee copies of the Declaration, By-Laws, and the rules and regulations;

(b) Compliance With Declaration, By-Laws, and Rules and Regulations, Use of Common Elements, and Liability for Assessments. Any lease of a Unit shall be deemed to contain the following provisions, whether or not expressly therein stated, and each Owner and each lessee, by occupancy of a Unit, covenants and agrees that any lease of a Unit shall contain the following language and agrees that if such language is not expressly contained therein, then such language shall be incorporated into the lease by existence of this covenant on the Unit;

(c) Compliance With Declaration, By-Laws, and Rules and Regulations. The lessee shall comply with all provisions of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto and shall control the conduct of all other Occupants and guests of the leased Unit in order to ensure compliance with the foregoing. The Owner shall cause all Occupants of his or her Unit to comply with the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, and shall be responsible for all violations by such Occupants, notwithstanding the fact that such Occupants of the Unit are fully liable and may be sanctioned for any violation of the Declaration, By-Laws, and rules and regulations adopted pursuant thereto. In the event that the lessee, or a person living with the lessee, violates the Declaration, By-Laws, or a rule or regulation for which a fine is imposed, notice of the violation shall be given to the Owner and the lessee, and such fine shall be assessed against the lessee in accordance with Article 3, Section 3.23 of the By-Laws. If the fine is not paid by the lessee within the time period set by the Board, the Board may assess the fine against the Owner and the Owner shall pay the fine upon notice from the Association of the lessee's failure to pay the fine. Unpaid fines shall constitute a lien against the Unit.

Any violation of the Declaration, By-Laws, or rules and regulations adopted pursuant thereto by the lessee, any Occupant, or any person living with the lessee, is deemed to be a default under the terms of the lease and authorizes the Owner to terminate the lease without liability and to evict the lessee in accordance with Alabama law. The Owner of a Unit hereby delegates and assigns to the Association, acting through the Board, the power and authority of enforcement against the lessee for breaches resulting from the violation of the Declaration, By-Laws, and the rules and regulations adopted pursuant thereto, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Owner, in accordance with the terms hereof. In the event the Association proceeds to evict the lessee, any costs, including attorneys' fees and court costs, associated with the eviction shall be an assessment and lien against the Unit.

(d) Use of Common Elements. Except where the Owner also occupies the Unit, 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 Elements of the Condominium, including, but not limited to, the use of any and all recreational facilities.

14.3. Liability for Assessments. When a Unit Owner who is leasing his or her Unit fails to pay any annual special, or specific assessment or any other charge for a period of more than thirty (30) days after it is due and payable, then the delinquent Owner hereby consents to the assignment of any rent received from the lessee during the period of delinquency, and, upon request by the Board, lessee shall pay to the Association all unpaid annual, special and specific assessments and other charges payable during and prior to the term of the lease and any other period of occupancy by lessee. 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 amounts authorized under this Declaration as if lessee were an Owner. 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.

14.4. Applicability. This Article 14 shall not apply to any leasing transaction entered into by the Declarant, the Association or the holder of any first Mortgage who becomes the Owner of a Unit through foreclosure or any other means pursuant to the satisfaction of the indebtedness secured by such Mortgage.

#### **ARTICLE 15: SALE OF UNITS**

A Unit Owner intending to make a transfer or sale of a Unit or any interest in a Unit shall give written notice to the Board of such intention within seven (7) days after execution of the transfer or sales documents. The Unit Owner shall furnish to the Board as part of the notice (i) the name and address of the intended grantee; and (ii) such other information as the Board may reasonably require. This Article 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 Unit, the purchaser of the Unit shall give written notice to the Board of his or her ownership of the Unit. Upon failure of an Owner to give the required notice within the seven-day time period provided herein, the Board may levy fines against the Unit and the Owner thereof, and assess the Owner for all costs incurred by the Association in determining his or her identity.

#### **ARTICLE 16: MAINTENANCE RESPONSIBILITY**

16.1. By the Owner. Each Owner shall have the obligation to maintain and keep in good repair all portions of his or her Unit and all Limited Common Elements assigned to the Unit, except any portion of the Unit or any Limited Common Element which is expressly made the maintenance obligation of the Association as set forth in Section 16.2 below. This maintenance responsibility shall include, but not be limited to, the following: all glass surfaces (excluding exterior cleaning); windows, window frames, casings, and locks (including caulking of windows); all doors, doorways, door frames, and hardware that are part of the entry system of the Unit (except for periodic painting or staining of the exterior surface of exterior doors and entry doors, door frames and garage doors of the Condominium); all portions of the heating and air conditioning system, including the air conditioning compressor serving the Unit and the fan coil; and all pipes, lines, ducts, conduits, or other apparatus which serve only the Unit, whether located within or outside of a Unit's boundaries (including all gas, electricity, water, sewer, or air conditioning pipes, lines, ducts, conduits, or other apparatus serving only the Unit).

(a) Some Units may contain interior support beams which are load bearing beams. No Owner or Occupant shall do any act which jeopardizes or impairs the integrity of such beams.

(b) In addition, each Unit Owner shall have the responsibility:

(i) to keep in a neat, clean and sanitary condition any Limited Common Elements serving his or her Unit including, without limitation, patios, terraces and balconies;

(ii) to perform his or her responsibility in such manner so as not to unreasonably disturb other persons in other Units;

(iii) to promptly report to the Association or its agent any defect or need for repairs for which the Association is responsible; and

(iv) to pay for the cost of repairing, replacing or cleaning up any item which is the responsibility of the Unit Owner but which responsibility such Owner fails or refuses to discharge (which the Association shall have the right, but not the obligation, to do), or to pay for the cost of repairing, replacing, or cleaning up any item which, although the responsibility of the Association, is necessitated by reason of the willful or negligent act of the Unit Owner, his or her family, invitees, tenants, or guests, with the cost thereof to be added to and become part of the Unit Owner's next chargeable assessment.

16.2. By the Association.

(a) The Association shall maintain and keep in good repair as a Common Expense the "Area of Common Responsibility," which includes the following:

(i) all Common Elements and Limited Common Element sidewalks, entry gates, driveways, and enclosed rear yard areas (excluding all other Limited Common Elements); provided, however, that Owners and Occupants are required to keep rear yard gates unlocked at all times in order to provide Association personnel access to rear yard areas. The Association and its agents and other duly authorized contractors are hereby granted a non-exclusive easement of access, ingress and egress to and from said Limited Common Elements for the purpose of reading utility meters and for performing the maintenance responsibility set forth herein. Any Limited Common Elements not named in this subsection are to be maintained by Owners as set forth in Section 16.1;

(ii) the roof and the roof support systems (including the roof joists and trusses, crossbeams, roof decking and underlayment, and shingles or other covering and surface materials), even though the roof and roof support systems are part of the Unit;

(iii) gutters and downspouts, if any, even though they are part of the Unit; and

(iv) periodic cleaning and/or painting and/or staining of exterior surfaces of the Condominium buildings and of exterior doors and entry doors, door frames and garage doors, as determined appropriate by the Board.

(b) Subject to the maintenance responsibilities herein provided, any maintenance or repair performed on or to the Common Elements by an Owner or Occupants which is the responsibility of the Association hereunder (including, but not limited to, landscaping of Common Elements) shall be performed at the sole expense of such Owner or Occupant, and the Owner or Occupant shall not be entitled to reimbursement from the Association even if the Association accepts the maintenance or repair.

(c) The Association shall not be liable for injury or damage to person or property caused by the elements or by the Owner of any Unit, or any other person, or resulting from any utility, rain, snow or ice which may leak or flow from any portion of the Common Elements or from any pipe, drain, conduit, appliance, or equipment which the Association is responsible to maintain hereunder. The Association shall not be liable to the Owner of any Unit or such Owner's Occupant, guest, invitee, or family, for loss or damage, by theft or otherwise, of any property which may be stored in or upon any of the Common Elements. The Association shall not be liable to any Owner, or any Owner's Occupant, guest, invitee, or family for any damage or injury caused in whole or in part by the Association's failure to discharge its responsibilities under this article where such damage or injury is not a foreseeable, natural result of the Association's failure to discharge its responsibilities. No diminution or abatement of assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under this Declarations, or for inconvenience or discomfort arising from the action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

(d) The Association shall repair incidental damage to any Unit resulting from performance of work which is the responsibility of the Association. As finished levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready." Components that may require repair or replacement, such as tile and trim, will be reinstated only to the extent that matching or similar materials are readily available at reasonable costs, as determined in the sole discretion of the Board. Accessibility around personal belongings for workers to perform such repairs is the responsibility of the Unit Owner or Occupant. Removal, storage or other protective measures of personal items are also the responsibility of the Unit Owner or Occupant. If the removal, storage, or other protective measures are not taken by the Unit Owner or Occupant and damage occurs due to the repair process, neither the Association nor the Board will be liable for such damage. Upon completion of such repairs the Association will perform cursory cleaning, but shall not be responsible for a detailed cleaning. The Board has sole discretion in defining the reasonable level, quality and extent of the repair and subsequent cleaning. In performing its responsibilities hereunder, the Association shall have the authority to delegate to such Persons, firms or corporations of its choice, such duties as are approved by the Board of Directors.

16.3. Failure to Maintain. If the Board of Directors determines that any Owner has failed or refused to discharge properly such Owner's obligation with regard to the maintenance, repair, or replacement of items of which such Owner is responsible hereunder, then the Association shall give the Owner written notice of the Owner's failure or refusal and of the Association's right to provide necessary maintenance, repair, or replacement at the Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the Board of Directors. Unless the Board of Directors determines that an emergency exists, the Owner shall have ten (10) days within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the Board of Directors determines that: (i) an emergency exists, or (ii) an Owner has not complied with the demand given by the Association as herein provided, the Association may provide any such maintenance, repair, or replacement at the Owner's sole cost and expense, and such costs shall be added to and become a part of the assessment to which such Owner is subject, and shall become a lien against the Unit, and shall be collected as provided herein for the collection of assessments.

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

16.4. Maintenance Standards and Interpretation. The maintenance standards and the enforcement thereof and the interpretation of maintenance obligations under this Declaration may vary from one term of the Board of Directors to another. These variances shall not constitute a waiver by the Board of Directors of the right to adopt and enforce maintenance standards under this section. No decision or interpretation by the Board of Directors shall constitute a binding precedent with respect to subsequent decisions or interpretations of the Board of Directors. All maintenance of a Unit shall be in conformance with the Community-Wide Standard of the Association. No Owner shall perform any maintenance which may result in a change or alteration to the exterior of the Unit without the prior written approval of the ARB as provided in Article 12 hereof.

16.5. Measures Related to Insurance Coverage. The Board, upon resolution, shall have the authority to require all or any Unit Owner(s) to do any act or perform any work involving portions of the Condominium which are the maintenance responsibility of the Unit Owner, which will, in the Board's sole discretion, decrease the possibility of fire or other damage in the Condominium, reduce the insurance premium paid by the Association for any insurance coverage or otherwise assist the Board in procuring or maintaining such insurance coverage. This authority shall include, but need not be limited to, requiring all Owners to turn off cut-off valves, which may now or hereafter be installed, during winter months for outside water spigots; requiring Owners to insulate pipes sufficiently or take other preventive measures to prevent freezing of water pipes; requiring Owners to install smoke detectors; requiring Owners to make improvements to the Owner's Unit; and such other measures as the Board may reasonably require so long as the cost of such work does not exceed Five Hundred Dollars (\$500.00) per Unit in any twelve (12) month period.

In addition to, and not in limitation of, any other rights the Association may have, if any Unit Owner does not comply with any reasonable requirement made by the Board pursuant to this Section 16.5 above, the Association, upon ten (10) days' written notice (during which period the Unit Owner may perform the required act or work without further liability), may perform such required act or work at the Unit Owner's sole cost. Such cost shall be an assessment and a lien against the Unit as provided herein. The Association shall have all rights necessary to implement the requirements mandated by the Board pursuant to this Section 16.5, including, but not limited to, a right of entry during reasonable hours and after reasonable notice to the Owner or Occupant of the Unit, except that access may be had at any time without notice in an emergency situation.

#### **ARTICLE 17: PARTY WALLS**

17.1. General Rules of Law to Apply. Each wall built as a part of the original construction of the Units which shall serve and separate any two (2) adjoining Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this article, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

17.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

17.3. Damage and Destruction. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner or Owners who have benefitted by the wall may restore it, and the Association shall reimburse said Owner(s) for the cost incurred, without prejudice, however, to the Association's right to seek reimbursement from or withhold payment to the Owners or others under any rule of law or provision in this Declaration regarding liability for negligent or willful acts or omissions.

17.4. Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this article shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

#### ARTICLE 18: EMINENT DOMAIN

In the event of a taking by eminent domain of any portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking at least seventy-five percent (75%) of the Total Eligible Association Vote shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements to the extent lands are available therefor. The provisions of Article 11, applicable to Common Elements improvements damage, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

#### ARTICLE 19: MORTGAGEE RIGHTS

19.1. Amendments to Documents. The consent of (a) members holding at least sixty-seven percent (67%) of the Total Eligible Association Vote, (b) the Declarant, during the Development Period, and (c) Eligible Mortgagees representing at least fifty-one percent (51%) of the total voting power attributable to Units subject to a Mortgage held by an Eligible Mortgagee, shall be required to materially amend any provisions of this Declaration, the By-Laws, or Articles of Incorporation, or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

- (a) voting;
- (b) assessments (including any increase in the annual assessment by more than twenty-five percent [25%] of the previous year's assessment), assessment liens, or subordination of such liens;
- (c) reductions in reserves for maintenance, repair and replacement of the Common Elements;
- (d) responsibility for maintenance and repair of the Condominium;
- (e) reallocation of interests in Common Elements, in a manner other than as provided herein;
- (f) redefinition of Unit boundaries, in a manner other than as provided herein;
- (g) convertibility of Units into Common Elements or vice versa;
- (h) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium in a manner other than as provided herein;
- (i) insurance or fidelity bonds;
- (j) leasing of Units;
- (k) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer or otherwise convey his or her Unit;

- (l) establishment of self-management by the Association where professional management has been required by an Eligible Mortgagee;
- (m) rights to use the Common Elements, in a manner other than as provided herein;
- (n) repair or restoration of the Condominium (after damage or partial condemnation) in a manner other than as provided herein; or
- (o) any provisions included in the Declaration, By-Laws, or Articles of Incorporation which are for the express benefit of holders, guarantors or insurers of first Mortgages on Units.

19.2. Mortgagee Consent. Unless at least sixty-seven percent (67%) of the first Mortgagees and Unit Owners other than Declarant, and the Declarant during the Development Period, give their consent, the Association or the membership shall not:

(a) by act or omission seek to abandon or terminate the Condominium. Notwithstanding the foregoing, pursuant to Section 35-8A-218 of the Act, the Condominium shall not be terminated unless (i) the Owners of Units to which eighty percent (80%) of the votes in the Association pertain, exclusive of any vote or votes appurtenant to any Unit then owned by the Declarant, (ii) Mortgagees of those Units, and (iii) the Declarant, during such time as the Declarant has the right to appoint the Board of Directors, agree to terminate the Condominium;

(b) except as provided herein and in the Act for condemnation, substantial damage and destruction, and annexation of additional property to the Condominium, change the pro rata interest or obligations of any individual Unit for the purpose of (i) levying assessments or changes or allocating distributions of hazard insurance proceeds or condemnation awards; or (ii) determining the pro rata share of ownership of each Unit in the Common Elements;

(c) partition or subdivide any Unit in any manner inconsistent with the provisions of this Declaration;

(d) by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements (the granting of easements or licenses, as authorized herein, shall not be deemed a transfer within the meaning of this clause); or

(e) use hazard insurance proceeds for losses to any portion of the Condominium (whether to Units or to Common Elements) for other than the repair, replacement or reconstruction of such portion of the Condominium.

The provisions of this section shall not be construed to reduce the percentage vote that must be obtained from Mortgagees or Unit Owners where a larger percentage vote is otherwise required by the Act or the Condominium Instruments for any of the actions contained in this section.

19.3. Liability of First Mortgagees. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or assessments shall be deemed to be a Common Expense collectible from Owners of all the Units, including such acquirer, its successors and assigns. Additionally, such acquirer shall be responsible for all charges accruing subsequent to the passage of title, including, but not limited to, all charges for the month in which title is passed.

19.4. Mortgagee Notice. Upon written request to the Association, identifying the requesting party's name and address of the holder and the Unit number or address to which the related Mortgage pertains, any Eligible Mortgagee or insurer or guarantor of a first Mortgage will be entitled to timely written notice of:

(a) any proposed amendment to the Condominium Instruments effecting a change in (i) the boundaries of any Unit or the exclusive easement rights appertaining thereto; (ii) the interests in the Common Elements, including Limited Common Elements, appertaining to any Unit, or the liability for Common Expenses appertaining thereto; (iii) the number of votes allocated to any Unit; or (iv) the purposes to which any Unit or the Common Elements are restricted;

(b) any proposed termination of the Condominium;

(c) any condemnation loss or any casualty loss which affects a material portion of the Condominium or any Unit on which there is a first Mortgage held, insured or guaranteed by such Eligible Mortgagee or party;

(d) any delinquency in the payment of assessments or charges owed by an Owner of a Unit subject to a first Mortgage held, insured or guaranteed by such Eligible Mortgagee or party which remains unsatisfied for a period of sixty (60) days, and any default in the performance by an individual Unit Owner of any other obligation under the Condominium Instruments which is not cured within sixty (60) days;

(e) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; or

(f) any proposed action which would require the consent of a specified percentage of Eligible Mortgagees, as specified herein.

19.5. Financial Statements. Pursuant to the terms of Section 6.6 of the By-Laws, any holder of a first Mortgage shall be entitled, upon written request, to receive within a reasonable time after request, a copy of the financial statement of the Association for the immediately preceding fiscal year, free of charge to the Mortgagee so requesting.

19.6. Additional Mortgagee Rights. Notwithstanding anything to the contrary herein contained, the provisions of Articles 14 and 15 governing sales and leases shall not apply to impair the right of any first Mortgagee to:

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

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

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

19.7. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

19.8. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of

the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

19.9. Construction of Article. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Alabama law for any of the acts set out in this Article.

## ARTICLE 20: DECLARANT RIGHTS

20.1. Right to Appoint and Remove Directors. The Declarant shall have the right to appoint and remove any member or members of the Board of Directors of the Association subject to such limitations as set forth herein.

(a) The Declarant's authority to appoint and remove a majority of the members of the Board of Directors of the Association shall expire on the first to occur of the following:

(i) sixty (60) days after seventy-five percent (75%) of the Units that may be created in the Condominium have been conveyed by the Declarant to Unit Owners other than a Person or Persons constituting the Declarant;

(ii) the expiration of two (2) years after the date upon which the Declarant has ceased to offer Units for sale in the ordinary course of business;

(iii) the expiration of five (5) years after the first Unit is conveyed by the Declarant to an Owner other than a Person or Persons constituting the Declarant;

(iv) the expiration of two (2) years after the Declarant last exercised any right granted to Declarant under this Declaration to add new Units to the Condominium; or

(v) the date on which the Declarant voluntarily relinquishes such right by executing and recording an amendment to this Declaration, which shall become effective as specified in such amendment.

(b) The Declarant's right to appoint and remove any member of the Board shall expire upon termination of the Development Period or on such earlier date on which the Declarant voluntarily relinquishes such right by executing and recording an amendment to this Declaration, which shall become effective as specified in such amendment.

20.2. Number and Terms of Directors Appointed by Declarant. The Board of Directors of the Association shall be comprised initially of no more than three (3) directors, who shall be appointed, removed, and/or reappointed by the Declarant, and whose terms shall expire at the time of expiration of the rights of the Declarant as set forth above.

20.3. Sale and Leasing of Units. Notwithstanding anything to the contrary contained herein, the Declarant shall have the right to sell or lease Units and to erect and maintain signs to facilitate such sales or leases as it, in its sole discretion, deems appropriate and shall not be required to comply with the provisions of this Declaration regarding signs and sales and leases.

20.4. Development and Sale Period. Notwithstanding any provisions in the Condominium Instruments and any related documents, during the Development Period, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such

portion of the Condominium as Declarant may deem necessary (and a non-exclusive easement within the Condominium shall exist in favor of the foregoing), such facilities and activities as in the sole opinion of Declarant may be required, convenient or incidental to Declarant's and such builder's or developer's development, construction and sales activities related to property described on Exhibit "A" to this Declaration, including, but without limitation, the right of access, ingress or egress for vehicular and pedestrian traffic over, under, on or in the Condominium; the right to tie into any portion of the Condominium with streets, driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), install, lay, replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines, and facilities constructed or installed in, on, under and/or over the Condominium; the right to carry on sales and promotional activities in the Condominium and the right to construct and operate business offices, signs, construction trailers, model Units and sales offices. Declarant and any such builder or developer may use an unlimited number of Units or offices owned or leased by Declarant or such builder or developer as model Units and sales offices, which may be of any size and on any location of the Condominium, and which offices may be initially designated by the Declarant as Common Elements pursuant to Section 35-8A-215 of the Act. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

20.5. Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Condominium Instruments may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Declaration or the Act. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

20.6. Development Rights. Development Rights reserved in this Declaration are subject to the provisions of this Section.

(a) Except as otherwise set forth herein, there are no assurances made with regard to improvements that may be made and Limited Common Elements that may be created within any part of the Condominium pursuant to any Development Right.

(b) Except as otherwise set forth herein, there are no assurances made with regard to the location of any building or other improvement that may be made within any part of the Condominium pursuant to any Development Right.

(c) Except as otherwise set forth herein, there are no assurances made that any Limited Common Elements created pursuant to any Development Right will be of the same general types and sizes as the Limited Common Elements within other parts of the Condominium.

(d) Except as otherwise set forth herein, there are no assurances made that the proportion of Limited Common Elements to Units erected pursuant to any Development Right will be approximately equal to the proportion existing within other parts of the Condominium.

(e) All restrictions in this Declaration affecting use, occupancy, or sale or lease of Units will apply to any Units created pursuant to the exercise of any Development Right to the extent set forth herein.

(f) The Declarant is not obligated to exercise any Development Right, and any assurance made in this Declaration with regard to the exercise of a Development Right is only applicable to the extent that such Development Right is exercised or as otherwise provided herein.

## ARTICLE 21: EASEMENTS

21.1. Use and Enjoyment. Each Unit Owner and Occupant shall have a right and non-exclusive easement of use and enjoyment in and to the Common Elements (including the right of access, ingress and egress to and from his or her Unit over those portions of the Condominium designated for such purposes), and such easement shall be appurtenant to and shall pass with the title to each Unit, subject to the rights of the Unit Owners to the exclusive use of the Limited Common Elements assigned to their respective Units and to the right of the Association to control the use and enjoyment of the Common Elements as provided by the terms of this Declaration including, but not limited to, the right of the Association to suspend voting and use privileges as provided herein. Every portion of a Unit and all Limited Common Elements contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.

21.2. Utilities and Drainage. To the extent that the sprinkler system or any utility or drainage line, pipe, wire or conduit serving any Unit, Units or the Common Elements shall lie wholly or partially within the boundaries of another Unit or the Common Elements, such other Unit, Units or the Common Elements shall be burdened with an easement for the use, maintenance, repair, and replacement of such sprinkler system, utility or drainage line, pipe, wire, or conduit, such easement to be in favor of the Unit, Units or Common Elements served by the same and the Association. It shall be the obligation of the benefited Owner to maintain, replace and repair any pipe, line, conduit, duct, or wire owned by such Owner, even if such pipe, line, conduit, duct, or wire is located in the Unit of another Owner. In such circumstance, the benefited Owner shall repair all incidental damage to any Unit or the Common Elements resulting from performance of any such work. All Unit Owners hereby covenant and agree that, as finished levels can have varying degrees, such repairs will be complete only to the extent of being "paint-ready." Components that may require repair or replacement, such as tile or trim, will be reinstated only to the extent that matching or similar materials are readily available at reasonable costs, as determined in the sole discretion of the Board.

21.3. Pest Control. The Association may, but shall not be obligated to, as a Common Expense, dispense chemicals for the extermination of insects and pests within the Units, Common Elements and Limited Common Elements. In the event the Association chooses to provide such pest control, the Association and its duly authorized contractors, representatives and agents shall have an easement to enter Units for the purpose of dispensing chemicals for the extermination of insects and pests within the Units, Common Elements and Limited Common Elements. Each Unit Owner shall either provide a key to the Unit or Limited Common Element for purpose of such entry or have someone available at such times as are designated by the Board to allow entry into the Unit or Limited Common Element for this purpose. The Association shall not be liable for any illness, damage or injury caused by the dispensing of these chemicals for this purpose.

21.4. Declarant Easements. During the Development Period, the Declarant and its duly authorized contractors, representatives, agents, and employees shall have: (a) an easement for the placement and maintenance of signs, a sales office, a business office, promotional facilities, and model Units on the Condominium, together with such other facilities as in the opinion of Declarant may be reasonably required, convenient or incidental to the completion, renovation, improvement, development, or sale of Units; and (b) a transferable non-exclusive easement on, over, through, under, and across the Common Elements and Limited Common Elements for the purpose of making improvements on the Condominium or any portion thereof, for the purpose of making such improvements and changes as

permitted in Article 3, for the purpose of installing, replacing, repairing and maintaining all utilities serving the Condominium, and for the purpose of doing all things reasonably necessary and proper in connection therewith. In addition, Declarant shall have an easement to conduct all activities and for exercising all rights set forth in Article 20 of this Declaration. The easements set forth herein shall be exercised with a reasonably minimum interference to the Owners' right and non-exclusive easement of use and enjoyment in and to the Common Elements and/or Limited Common Elements.

21.5. Additional Easements. Declarant hereby reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment and for maintenance and use of any permitted encroachment, between adjoining Units and between each Unit and the Common Elements. Declarant hereby also reserves any easements set forth in Section 35-8A-216 of the Act and in the Permitted Exceptions, and each Owner, by acceptance of a deed to a Unit, acknowledges and agrees that its ownership of a Unit and its undivided interest in the Common Elements shall be subject to the Permitted Exceptions. In addition, to the extent that the easements contained in the Permitted Exceptions are covenants running with the property comprising the Condominium, the Association hereby assumes all of the rights and obligations related to the Condominium set forth therein.

## ARTICLE 22: GENERAL PROVISIONS

22.1. Security. The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve safety on the Condominium; however, each Owner, on behalf of such Owner and the Occupants, guests, licensees, and invitees, of the Unit acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in and to the Condominium. It shall be the responsibility of each Owner to protect such Owner's persons and property and all responsibility to provide security shall lie solely with each Unit Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of safety measures undertaken.

Neither the Association nor the Declarant shall in any way be considered insurers or guarantors of security within the Condominium, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any security system or measures cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all Occupants of its Unit that the Association, its Board of Directors and committees, and Declarant are not insurers and that each Person using the Condominium assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

22.2. Implied Rights. The Association may exercise any right or privilege given to it expressly by this Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

22.3. Amendment. Except where a higher vote is required for action under any other provisions of this Declaration or by the Act, in which case such higher vote shall be necessary to amend such provision, or where otherwise permitted elsewhere herein or under the Act, this Declaration, the Plat and the Plans 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-seven percent (67%) of the Total Eligible Association Vote. As long as the Declarant has the right to appoint any director of the Association as provided in Article 20, any amendment to this Declaration or the By-Laws shall also

require the written consent of the Declarant. In addition, no amendment to this Declaration shall alter the easement rights contained in Section 21.4 without the consent of the Person(s) holding such easement rights. Notice of any meeting at which a proposed amendment will be considered shall state the facts 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 recorded in the Public Records.

22.4. Fair Housing. The provisions of the Condominium Instruments shall be subordinate to the Fair Housing Amendments Act of 1988, 432 U.S.C. § 3601, *et seq.* (hereinafter referred to as "FHAA"), and shall be applied so as to comply with the FHAA. In the event that there is a conflict between or among the Condominium Instruments and the FHAA, the FHAA shall prevail. Notwithstanding anything to the contrary contained herein, in the event that any provision of this Declaration conflicts with the FHAA, the Board of Directors, without the consent of the Owners or of the Declarant, shall have the unilateral right to amend this Declaration for the purpose of bringing this Declaration into compliance with the FHAA. Furthermore, notwithstanding Section 6.2 hereof, the Board shall have the unilateral right to assign portions of the Common Elements as Limited Common Element to one (1) or more Owners or Occupants should such action be required in order to make a reasonable accommodation under the FHAA.

22.5. Compliance. Every Owner and Occupant of any Unit shall comply with this Declaration, the By-Laws, and the rules of the Association. Failure to comply shall be grounds for an action by the Association or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 8.3.

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

22.7. Captions. The captions of each Article and Section hereof, as to the contents of each Article and Section, are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

22.8. Notices. Notices provided for in this Declaration or the Articles or By-Laws shall be in writing, and shall be addressed to any Owner or Occupant at the address of the Unit and to the Declarant or the Association at the address of their respective registered agents in the State of Alabama. Any Owner may designate a different address for notices to such Owner by giving written notice to the Association. Notices addressed as above shall be deemed delivered three business days after mailing by United States registered or certified mail, postpaid, or upon delivery when delivered in person, including delivery by Federal Express or other reputable courier service.

22.9. Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

22.10. Indemnification. To the fullest extent allowed by the Alabama Nonprofit Corporation Act, and in accordance therewith, the Association shall indemnify every current and former officer,

director and committee member against any and all expenses, including, but not limited to, attorneys' fees, imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

#### ARTICLE 23: EXPANSION OF THE CONDOMINIUM

Declarant reserves the option to expand the Condominium by adding to the Condominium all or any part of the Additional Property on one or more occasions. Except as set forth herein, there are no limitations on this option. Except for zoning and other governmental requirements, there are no limitations as to the location of improvements on the Additional Property. The Additional Property may be added as a whole at one time or portions may be added at different times. There is no obligation to add all or any remaining portion of the Additional Property to the Condominium, even if the option to expand the Condominium is exercised with regard to a portion of the Additional Property. There are no limitations fixing the boundaries of any portion of the Additional Property which may be submitted to the Declaration, and there are no limitations regulating the order in which portions of the Additional Property may be submitted to this Declaration. This option shall expire seven (7) years from the date of recording of this Declaration. The maximum number of Units that may be created on the Additional Property and added to the Condominium is one. The maximum average number of Units per acre that may be created on the Condominium is one (1). No assurances are made that any improvements will be made on all or any of the Additional Property which may be submitted to this Declaration. The Additional Property and any Units created on the Additional Property shall be subject to the use restrictions set forth herein when and if it is added to the Condominium. All improvements which may be built on all or any portion of the Additional Property will be consistent with the initial improvements built on the submitted property in terms of architectural style, size, structure type, and quality of construction. All improvements to be located on each portion of the Additional Property which is being submitted to the Condominium shall be substantially completed prior to its submission to the Condominium. The Declarant shall have the right to assign Limited Common Elements on the Additional Property in accordance with the provisions hereof. The undivided interests in the Common Elements and liability for Common Expenses are allocated among the Units on the submitted property equally, and, upon the expansion of the Condominium to include any portion of the Additional Property, shall be reallocated among the Units on the submitted property and the Additional Property on the same basis. Each vote in the Association is equally weighted and, upon expansion of the Condominium to include any portion of the Additional Property, will continue to be equally weighted. Any expansion under this Article shall be effected by Declarant's executing and recording the amendments to this Declaration, and the plats and plans required by the Act, at Declarant's sole expense. The Units thereby created and added shall be owned by Declarant until conveyed, but the Common Elements shall be owned by all of the Unit Owners.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Declarant has executed this Declaration under seal, this 4<sup>th</sup> day of April, 2005.

DECLARANT:

F&W GROUP, L.L.C.,  
an Alabama limited liability company

Signed, sealed, and delivered  
in the presence of:

By: [Signature]  
Hugh W. Wheelless, Managing Member

[Signature]  
Witness

Attest: [Signature]  
Robert Flowers, Member

[Signature]  
Notary Public

[CORPORATE SEAL]

My Commission Expires: 4/18/2005

[NOTARIAL SEAL]

**MORTGAGEE CONSENT**

Regions Bank ("Lender"), beneficiary under a Mortgage to Secure Debt and Security Agreement dated January 12, 2005, and recorded on January 14, 2005, in the Public Records at Mortgage Book 1711, Page 99 (as amended from time to time, the "Security Deed") for itself and its successors and assigns, approves the foregoing Declaration of Condominium for Village on the Green Condominium Association, Inc. (the "Declaration"), and Lender agrees and acknowledges that, upon recordation of the Declaration, the restrictive covenants contained in the Declaration will run with the land which serves as security for the debt evidenced by the Security Deed and further agrees that any foreclosure or enforcement of any other remedy available to Lender under the Security Deed will not render void or otherwise impair the validity of the Declaration.

Dated: March 24, 2005.

LENDER:

**REGIONS BANK**

Signed, sealed, and delivered  
In the presence of:

By: Reginald B. Harp, III (SEAL)  
Reginald B. Harp, III

Title: Commercial Loan Officer

(CORPORATE SEAL)

K. Justice  
Witness

Sherril Parrish  
Notary Public  
MY COMMISSION EXPIRES APRIL 3, 2006  
My Commission Expires:

(NOTARY SEAL)

## EXHIBIT "A"

## LEGAL DESCRIPTION

A LOT OR PARCEL OF LAND BEING LOCATED IN THE CITY OF DOTHAN, HOUSTON COUNTY, ALABAMA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN EXISTING CONCRETE MONUMENT MARKING THE SOUTH POINT OF THE LINE AGREED UPON BY OWNER(S) OF THE FORMERLY CALLED HANAHAN PROPERTY AND FORMERLY CALLED SALIBA PROPERTY AND THE NORTH SIDE OF COUNTRY CLUB ROAD (NOT OPENED) AS FOUND IN MISCELLANEOUS BOOK 29 PAGES 466-469 RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF HOUSTON COUNTY; THENCE S 81°23'02" E A DISTANCE OF 112.52 FT TO A SET "X" IN CONCRETE; THENCE DEPART SAID NORTH R/W BEARING N 02°39'13" E A DISTANCE OF 50.56 FEET, TO SET "X" IN CONCRETE; THENCE S 78°38'07" E A DISTANCE OF 105.05 FEET TO AN EXISTING IRON PIN (EIP) #4 REBAR; THENCE N 02°41'59" E A DISTANCE OF 140.00 FT TO A SET NAIL IN ASPHALT (SET NAIL); THENCE S 78°38'06" A DISTANCE OF 104.98 FT TO A SIP; THENCE N 02°48'51" E A DISTANCE OF 50.65 FT TO AN EIP; THENCE S 77°34'34" E A DISTANCE OF 132.74 FT TO AN EIP; THENCE S 77°32'06" E A DISTANCE OF 20.01 FT TO AN EIP; THENCE S 77°53'19" E A DISTANCE OF 119.14 FT TO AN EIP; THENCE S 76°52'05" E A DISTANCE OF 12.10 FT TO AN EIP; THENCE S 78°00'16" E A DISTANCE OF 24.74 FT TO AN EIP; THENCE S 77°22'03" E A DISTANCE OF 138.52 FT TO AN EXISTING AXLE (AXLE); THENCE S 00°11'08" W A DISTANCE OF 221.33 FT TO AN AXLE; THENCE N 77°29'32" W A DISTANCE OF 172.46 FT TO AN EIP; THENCE N 79°59'07" W A DISTANCE OF 282.99 FT TO AN EIP; THENCE S 01°57'04" W A DISTANCE OF 50.17 FT TO A SIP; THENCE N 81°23'02" W A DISTANCE OF 321.25 FT TO A SIP; THENCE N 83°03'57" W A DISTANCE OF 258.02 FT TO THE EAST RIGHT-OF-WAY (R/W) OF SOUTH CHEROKEE AVENUE (50' R/W) AND A SIP; THENCE CONTINUE NORTH ALONG SAID R/W BEARING N 00°17'37" E A DISTANCE OF 50.34 FT TO A SIP; THENCE DEPART SAID R/W BEARING S 83°03'40" E A DISTANCE OF 150.94 FT TO AN EIP; THENCE S 83°03'40" E A DISTANCE OF 108.54 FT TO THE POINT OF BEGINNING. SAID PARCEL BEING LOCATED IN THE NW 1/4 OF THE NW 1/4 OF SECTION 23, TOWNSHIP 3 NORTH, RANGE 26 EAST CITY OF DOTHAN, HOUSTON COUNTY, ALABAMA AND CONTAINING 3.38 ACRES, MORE OR LESS.

AT:143369v3

**EXHIBIT "B"****EXCEPTIONS TO TITLE AND OWNERSHIP**

1. Declaration of Condominium for Village on the Green, A Condominium, to be recorded in the office of the Judge of Probate of Houston County, Alabama.
2. Articles of Incorporation of Village on the Green Condominium Association, Inc., a non profit corporation to be recorded in the office of the Judge of Probate of Houston County, Alabama.
3. By-laws of Village on the Green Condominium Association, Inc., a non profit corporation attached as an Exhibit to this Declaration.
4. Utility and Drainage easement to City of Dothan recorded in Deed Book 614 at page 511 in the office of the Judge of Probate of Houston County, Alabama.
5. Mortgage from F&W Group, L.L.C. to Regions Bank dated 01-12-05 and filed 01-14-05 in Mortgage Book 1711 at page 99 in the office of the Judge of Probate of Houston County, Alabama.
6. License and Indemnification Agreement between F & W Group, L.L.C. and adjacent land owners to install drainage pipes in an existing ditch common to land owned by F&W Group, L.L.C. and the adjacent owners. Said Agreement is not currently recorded in the Office of the Judge of Probate of Houston County, Alabama
7. Access drive easement between F&W Group, L.L.C. and Bill E. Mullen and Tallis Mullen dated 5-10-2004 and filed for record on the 11th day of October, 2004 in Deed Book 617 at page 302 in the Office of the Judge of Probate of Houston County, Alabama.
8. Ad valorem taxes for 2005 and subsequent years.

EXHIBIT "C"  
 UNDIVIDED INTEREST IN THE COMMON ELEMENTS  
 AND LIABILITY FOR EXPENSES

<u>Unit Number</u>	<u>Ownership Percentage</u>
1	.05
2	.05
3	.05
4	.05
5	.05
6	.05
7	.05
8	.05
9	.05
10	.05
11	.05
12	.05
13	.05
14	.05
15	.05
16	.05
17	.05
18	.05
19	.05
20	<u>.05</u>
<b>Total</b>	<b>100%</b>

EXHIBIT "D"

ASSIGNMENT OF STORAGE SPACES

Unit Number	Storage Space No.
110-1	1
110-2	2
110-3	3
110-4	4
110-5	5
111-1	1
111-2	2
111-3	3
112-1	1
112-2	2
112-3	3
112-4	4
113-1	1
113-2	2
113-3	3
113-4	4
114-1	1
114-2	2
114-3	3
114-4	4

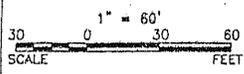
EXHIBIT "E"  
ADDITIONAL PROPERTY

AT:143369v3

PROJECT No. 0215-03  
 SURVEY DATE: FEBRUARY 17, 2004  
 AL C/A NUMBER CA-0821-LS

NOTE: THIS DRAWING DOES NOT REFLECT ANY TITLE OR EASEMENT RESEARCH, OTHER THAN IS VISIBLE ON THE GROUND OR PROVIDED BY THE CLIENTS CONVEYANCE.  
 THIS DRAWING IS INVALID WITHOUT SURVEYOR'S SIGNATURE AND EMBOSSED SEAL.  
 BASIS OF BEARINGS: GRID NORTH BASED ON THE ALABAMA STATE PLANE COORDINATE SYSTEM.

LEGEND	
Rad.	RADIUS
M.B.L.	MINIMUM BUILDING LINE
T.	TOWNSHIP
R.	RANGE
D.	DEGREES
'	MINUTES, FEET
"	SECONDS, INCHES
■	EXISTING CONCRETE MONUMENT
□	SET CONCRETE MONUMENT
○	SET IRON PIN
●	EXISTING PIPE
—	FENCE
ch	CHORD
N	NORTH
S	SOUTH
E	EAST
W	WEST
⚡	POWER POLE



Mullens

**SURVEYOR'S NOTES:**

1. THIS SURVEY WAS PREPARED FOR THE CLIENT SHOWN AND IS NOT TO BE USED FOR ANY OTHER PURPOSE WITHOUT PRIOR APPROVAL FROM THIS SURVEYOR.
2. ALL MEASUREMENTS WERE MADE ACCORDING TO UNITED STATES STANDARD FOOT.
3. NO INSTRUMENTS OF RECORD REFLECTING EASEMENTS, RIGHT-OF-WAYS, AND/OR OWNERSHIP WERE FURNISHED THIS SURVEYOR, EXCEPT AS SHOWN OR NOTED.
4. UNLESS STATED OTHERWISE HEREON, ONLY EVIDENCE OF EASEMENTS OR STRUCTURES ABOVE WHICH ARE APPARENT FROM A CASUAL ABOVE GROUND INSPECTION OF PREMISES ARE SHOWN.
5. SOURCE OF INFORMATION: USED COPY OF COUNTRY CLUB SUBDIVISION PLAT; DEED LEGALS AS RETRIEVED; EXISTING MONUMENTATION.
6. ENCROACHMENTS AND IMPROVEMENTS ARE AS SHOWN.
7. LIABILITY OF THE UNDERSIGNED FOR THE SURVEY SHOWN SHALL NOT EXCEED THE AMOUNT PAID FOR THIS SURVEY.
8. NO UNDERGROUND INSTALLATIONS OR IMPROVEMENTS HAVE BEEN LOCATED, EXCEPT AS SHOWN OR NOTED.
9. EXISTING CONCRETE MONUMENT IS A 6"x6". EXISTING IRON PIPES (EIP) ARE AS LABELED. SET IRON PINS (SIP) ARE #4 REBAR 24" LONG WITH YELLOW CAP STAMPED CA-0821LS.

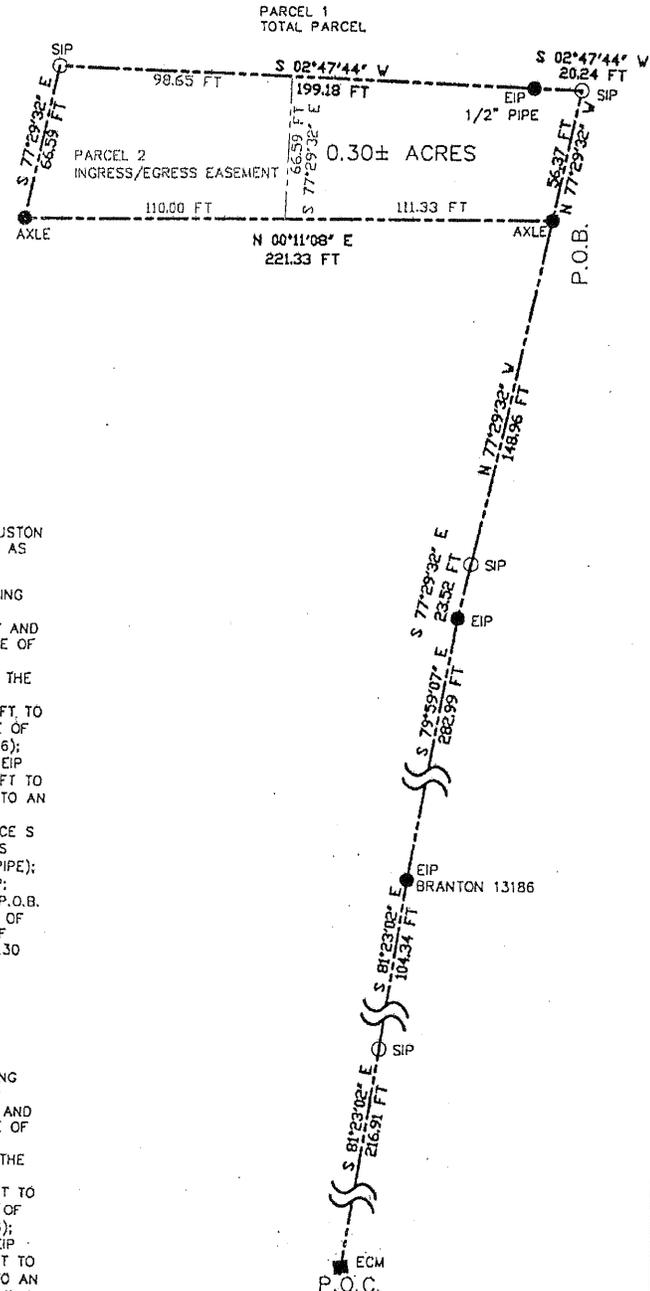
**LEGAL DESCRIPTIONS:**

**PARCEL 1**  
 A LOT OR PARCEL OF LAND IN THE CITY OF DOTHAN, HOUSTON COUNTY, ALABAMA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN EXISTING CONCRETE MONUMENT MARKING THE SOUTH POINT OF THE WEST LINE AGREED UPON BY OWNER(S) OF THE FORMERLY CALLED HANAHAN PROPERTY AND FORMERLY CALLED SALIBA PROPERTY AND THE NORTH SIDE OF COUNTRY CLUB ROAD (NOT OPENED) AS FOUND IN MISCELLANEOUS BOOK 29, PAGES 466-469, RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF HOUSTON COUNTY, ALABAMA; THENCE S 81°23'02" E A DISTANCE OF 216.91 FT TO A SET IRON PIN (SIP); THENCE S 81°23'02" E A DISTANCE OF 104.34 FT TO AN EXISTING IRON PIN (EIP) (BRANTON 13186); THENCE S 79°59'07" E A DISTANCE OF 282.99 FT TO AN EIP (LS 6010); THENCE S 77°29'32" E A DISTANCE OF 23.52 FT TO A SIP; THENCE S 77°29'32" E A DISTANCE OF 148.96 FT TO AN AXLE AND THE POINT OF BEGINNING (P.O.B.); THENCE N 00°11'08" E A DISTANCE OF 221.33 FT TO AN AXLE; THENCE S 77°29'32" E A DISTANCE OF 66.59 FT TO A SIP; THENCE S 02°47'44" W A DISTANCE OF 199.18 FT TO AN EIP (1/2" PIPE); THENCE S 02°47'44" W A DISTANCE OF 20.24 FT TO A SIP; THENCE N 77°29'32" W A DISTANCE OF 56.37 FT TO THE P.O.B. SAID LOT BEING LOCATED IN THE NW 1/4 OF THE NW 1/4 OF SECTION 23, TOWNSHIP 3 NORTH, RANGE 26 EAST, CITY OF DOTHAN, HOUSTON COUNTY, ALABAMA, AND CONTAINING 0.30 ACRES, MORE OR LESS.

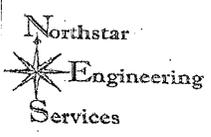
**PARCEL 2**  
 AN INGRESS/EGRESS EASEMENT IN THE CITY OF DOTHAN, HOUSTON COUNTY, ALABAMA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN EXISTING CONCRETE MONUMENT MARKING THE SOUTH POINT OF THE WEST LINE AGREED UPON BY OWNER(S) OF THE FORMERLY CALLED HANAHAN PROPERTY AND FORMERLY CALLED SALIBA PROPERTY AND THE NORTH SIDE OF COUNTRY CLUB ROAD (NOT OPENED) AS FOUND IN MISCELLANEOUS BOOK 29, PAGES 466-469, RECORDED IN THE OFFICE OF THE JUDGE OF PROBATE OF HOUSTON COUNTY, ALABAMA; THENCE S 81°23'02" E A DISTANCE OF 216.91 FT TO A SET IRON PIN (SIP); THENCE S 81°23'02" E A DISTANCE OF 104.34 FT TO AN EXISTING IRON PIN (EIP) (BRANTON 13186); THENCE S 79°59'07" E A DISTANCE OF 282.99 FT TO AN EIP (LS 6010); THENCE S 77°29'32" E A DISTANCE OF 23.52 FT TO A SIP; THENCE S 77°29'32" E A DISTANCE OF 148.96 FT TO AN AXLE; THENCE N 00°11'08" E A DISTANCE OF 111.33 FT TO THE POINT OF BEGINNING (P.O.B.); THENCE N 00°11'08" E A DISTANCE OF 110.00 FT TO AN AXLE; THENCE S 77°29'32" E A DISTANCE OF 66.59 FT TO A SIP; THENCE S 02°47'44" W A DISTANCE OF 98.65 FT TO A POINT; THENCE N 77°29'32" W A DISTANCE OF 66.59 FT TO THE P.O.B. SAID LOT BEING LOCATED IN THE NW 1/4 OF THE NW 1/4 OF SECTION 23, TOWNSHIP 3 NORTH, RANGE 26 EAST, CITY OF DOTHAN, HOUSTON COUNTY, ALABAMA, AND CONTAINING 0.15 ACRES, MORE OR LESS.



SOUTH POINT OF LINE DESCRIBED IN MISC. BOOK 29 PAGES 466-469

CLIENT: BILLY F. MULLEN.



MUNICIPAL DESIGN, AIRPORT DESIGN,  
 SITE PLANNING AND DEVELOPMENT,  
 SUBDIVISIONS, AND SURVEYING  
 PHONE (334)673-9895  
 FAX (334) 673-1846

Grid North based on the Alabama State Plane Coordinate System.

"I hereby state that all parts of this boundary survey and drawing have been completed in accordance with the current requirements of the Standards of Practice for Surveying in the State of Alabama to the best of my knowledge, information and belief."

*Phillip E. Santora*  
 Phillip E. Santora  
 Alabama Reg. L.S. #22524-S

2-17-04  
 Date

2431 HARTFORD HIGHWAY DOTHAN, ALABAMA 36305

EXHIBIT "F"

BY-LAWS  
OF  
VILLAGE ON THE GREEN CONDOMINIUM ASSOCIATION, INC.

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**BY-LAWS**  
**OF**  
**VILLAGE ON THE GREEN CONDOMINIUM ASSOCIATION, INC.**

**ARTICLE 1: NAME, PRINCIPAL OFFICE AND DEFINITIONS**

1.1. Applicability. These By-Laws provide for the self-governance of Village on the Green Condominium Association, Inc. in accordance with the Alabama Uniform Condominium Act of 1991, the Articles of Incorporation filed in the Public Records, and the Declaration of Condominium for Village on the Green, a Condominium recorded in the Public Records (the "Declaration").

1.2. Name. The name of the corporation is Village on the Green Condominium Association, Inc. (the "Association").

1.3. Principal Office. The principal office of the Association shall be located in Dothan, Houston, Alabama or at such other location within the State of Alabama as determined by the Board. The Association may have such other offices, either within or outside the State of Alabama, as the Board of Directors may determine or as the affairs of the Association may require.

1.4. Definitions. The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration, unless the context indicates otherwise.

**ARTICLE 2: ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES**

2.1. Membership. An Owner of a Unit shall automatically become a member of the Association as more fully set forth in the Declaration, the terms of which, pertaining to membership, are incorporated by this reference. If title to a Unit is held by more than one (1) Person, the membership shall be shared in the same proportion as the title, but there shall be only one (1) membership and one (1) equally weighted vote per Unit, which vote shall be appurtenant to such Unit. In the event an Owner is a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, manager, partner, or trustee designated by the entity shall be eligible to represent such entity or entities in the affairs of the Association. Membership shall be appurtenant to the Unit and shall be transferred automatically by conveyance of that Unit and may be transferred only in connection with the transfer of title.

2.2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board, either within the Condominium or as convenient as is possible and practical.

2.3. Annual Meetings. The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Subsequent regular meetings shall be held annually on a date and at a time set by the Board.

2.4. Special Meetings. The president may call special meetings. In addition, it shall be the duty of the president to call a special meeting if so directed by resolution of the Board or upon a petition signed by members representing at least twenty-five percent (25%) of the Total Eligible Association Vote.

2.5. Notice of Meetings. Written notice stating the place, day and time of any meeting of the members shall be delivered, either personally or by mail, to each member entitled to vote at such meeting, not less than twenty-one (21) days before the date of such annual or regular meeting and at least seven (7) days before the date of any special meeting, by or at the direction of the president or the secretary or the officers or persons calling the meeting.

In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United State mail addressed to the member at its address as it appears on the records of the Association, with postage prepaid.

2.6. Waiver of Notice. Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of the members, either before or after such meeting. Attendance at a meeting by a member or the member's proxy shall be deemed waiver by such member or proxy of notice of the time, date and place thereof, unless such member or proxy specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. Adjournment of Meetings. Any meeting of the Association may be adjourned from time to time for periods not exceeding ten (10) days by vote of members holding a Majority of the votes represented at such meeting, regardless of whether a quorum is present. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice for reconvening the meeting shall be given to members in the manner prescribed for regular meetings.

2.8. Voting. The voting rights of the members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.9. List for Voting. After setting a record date for notice of a meeting, the Board shall prepare an alphabetical list of the names of the members entitled to notice of such meeting. The list shall show the address of the member and the number of votes each is entitled to vote at the meeting. The list for voting shall be made available for inspection in accordance with Alabama law.

2.10. Proxies. At all meetings of members, each member may vote in person (if a corporation, limited liability company, partnership, trust, or other legal entity not being a natural person or persons, then through any officer, director, manager, partner, or trustee duly authorized to act on behalf of the member) or by proxy, subject to the limitations of Alabama law. All proxies shall be in writing specifying the Unit(s) for which it is given, signed by the member or its duly authorized attorney-in-fact, dated and filed with the secretary of the Association prior to any meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more

proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Unit for which it was given, or upon receipt of notice by the secretary of the death or judicially declared incompetence of a member who is a natural person, or of written revocation, or eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.

2.11. Quorum. Except as otherwise provided in these By-Laws or in the Declaration, the presence, in person or by proxy, of members representing twenty percent (20%) of the Total Eligible Association Vote shall constitute a quorum at all meetings of the Association. Except when a higher vote is required under the Declaration or these By-laws, the vote of a Majority of the members present and eligible to vote shall constitute a decision of the Association. Owners whose voting rights have been suspended pursuant to the Declaration or these By-Laws shall not be counted in determining the total eligible votes or the establishment of a quorum.

2.12. Conduct of Meetings. The president shall preside over all meetings of the Association, and the secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13. Action Without a Meeting. Any action required by the Alabama Nonprofit Corporation Act to be taken at a meeting of the members or any action which may be taken at a meeting of the members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the members entitled to vote with respect to the subject matter thereof. Such consent may be exercised in counterparts and shall have the same force and effect as a unanimous vote.

### **ARTICLE 3: BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS**

#### **A. Composition and Selection**

3.1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) equal vote. Except with respect to directors appointed by the Declarant, the directors shall be residents or eligible members; provided, however, no two (2) Owners or residents representing the same Unit may serve on the Board at the same time. No Owner or resident shall be eligible to be elected to serve as a director if any assessment for such Owner's Unit is delinquent. A "resident" shall be any natural person eighteen (18) years of age or older whose principal place of residence is a Unit within the Condominium. In the case of a member which is not a natural person, any officer, director, manager, partner, employee, or trust officer of such member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such member; provided, no member may have more than one (1) such representative on the Board at a time, except in the case of directors appointed by the Declarant.

3.2. Number of Directors. The Board shall consist of three (3) directors as provided in Section 3.4 below. The number of directors may be changed by resolution of the Board.

3.3. Nomination and Election of Directors. Except with respect to directors appointed by the Declarant, directors shall be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

Each Owner may cast the entire vote assigned to such Owner's Unit for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be

filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.4. Election and Term of Office.

(a) The initial Board shall consist of three (3) directors appointed by the Declarant.

(b) Not later than the ninetieth (90th) day after twenty-five percent (25%) of the Units that may be created in the Condominium have been conveyed by Declarant to Owners other than a Person or Persons constituting Declarant, the Association shall hold an election at which the members, other than Declarant, shall be entitled to elect one (1) of the three (3) directors, who shall serve a term of two (2) years or until the occurrence of the event described in subsection (c) below, whichever is shorter. If such director's term expires prior to the occurrence of the event described in subsection (c), a successor shall be elected for a like term. The remaining two (2) directors shall be appointees of Declarant.

(c) Upon termination of the Declarant's right to appoint a majority of the directors as provided in the Declaration, the Association shall hold an election at which the members, other than the Declarant, shall be entitled to elect two (2) of the three (3) directors, who shall serve terms of two (2) years each or until the occurrence of the event in subsection (d) below, whichever is shorter. If such director's term expires prior to the occurrence of the event described in subsection (d), a successor shall be elected for a like term. The remaining director shall be appointed by the Declarant until the occurrence of the event in subsection (d).

(d) Upon expiration of the Declarant's right to appoint any directors as provided in the Declaration, the Association shall hold an election at which the members, other than the Declarant, shall be entitled to elect all three (3) directors, with the two (2) directors receiving the largest number of votes being elected for a term of two (2) years, and the remaining director being elected for a term of one (1) year.

Upon the expiration of the term of office of each of these three (3) directors elected by the members, a successor shall be elected to serve a term of two (2) years, and all subsequent terms shall be for two (2) years. The directors elected by the members shall hold office until their respective successors have been elected.

3.5. Removal of Directors and Vacancies. Any director elected by members may be removed, with or without cause, by a Majority of the Total Eligible Association Vote. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the members to fill the vacancy for the remainder of the term of such director.

Any director elected by the members who has three (3) or more consecutive unexcused absences from Board meetings, or who is more than thirty (30) days delinquent (or is the resident of a Unit that is more than thirty [30] days delinquent, or is the representative of a member who is more than thirty [30] days delinquent) in the payment of any assessment or other charge due the Association, may be removed by a Majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy until the next annual meeting, at which time the members may elect a successor for the remainder of the term.

In the event of the death, disability or resignation of a director elected by the members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the members shall elect a successor for the remainder of the term.

This section shall not apply to directors appointed by the Declarant. The Declarant shall be entitled to appoint a successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by the Declarant, during the period in which the Declarant has the right to appoint directors.

B. Meetings.

3.6. Organizational Meetings. Within thirty (30) days after the election or appointment of new directors, the Board shall hold an organizational meeting at such time and place as the Board shall set.

3.7. Regular Meetings. Regular meetings of the Board may be held at such time and place as a Majority of the directors shall determine, but at least one (1) such meeting shall be held during each year.

3.8. Special Meetings. Special meetings of the Board of Directors shall be held when called by the president or on written request of a Majority of the directors.

3.9. Notice. Notice of a regular meeting shall be communicated to directors not less than four (4) calendar days prior to the meeting. Notice of a special meeting shall be communicated to directors not less than two (2) days prior to the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. Notices shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a natural person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; (d) telecopier transmission to the director's home or office, with confirmation of receipt by the receiving telecopier; (e) telegram, charges prepaid; (f) overnight or same day delivery, charges prepaid; or (g) electronic mail ("e-mail"), using Internet accessible equipment and services if the director has consented in writing to such method of delivery and has provided the Board with an e-mail address. All such notices shall be given at the director's telephone or telecopier number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal, overnight or courier delivery, telephone, telecopier, telegraph, or e-mail shall be deemed communicated when delivered, telephoned, telecopied, e-mailed or given to the telegraph company.

3.10. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11. Participation in Meetings. Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of telephone conference, video conference, or similar communications equipment, by means of which all persons participating in the

meeting can converse with each other. Participation in a meeting pursuant to this section shall constitute presence in person at such meeting.

3.12. Quorum of Board of Directors. At all meetings of the Board, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a Majority of the directors present at such meeting may adjourn the meeting to a time not more than five (5) days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13. Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by members representing at least a Majority of the Total Eligible Association Vote. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a Majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a Majority of the Board of Directors, excluding the interested director.

3.14. Conduct of Meetings. The president shall preside over all meetings of the Board, and the secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings. In the case of a tie vote on a motion or resolution before the Board, the motion or resolution is considered lost.

3.15. Open Meetings. Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on the member's behalf by a director. In such case, the president may limit the time any member may speak. Notwithstanding the above, the president may adjourn any meeting of the Board, reconvene in executive session, and exclude members to discuss matters of a sensitive nature.

3.16. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if all of the directors consent in writing to such action. Such written consent must describe the action taken and be filed with the minutes of the Board.

C. Powers and Duties.

3.17. Powers. The Board of Directors shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By-Laws, the Articles, and as provided by law. The Board may do or cause to be done all acts and things as are not directed by the Declaration, the Articles, these By-Laws, or Alabama law to be done and exercised exclusively by the membership generally.

3.18. Duties. The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners, as set forth in the Declaration;
- (c) providing for the operation, care, upkeep, and maintenance of those portions of the Condominium as provided in the Declaration;
- (d) designating, hiring and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve and using such funds to operate the Association; provided, any reserve fund may be deposited, in the directors' best business judgment, in depositories other than banks;
- (f) making and amending rules in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions and improvements to or alterations of the Common Elements in accordance with the Declaration and these By-Laws;
- (i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules of the Association and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the cost of all services rendered to the Association;
- (l) keeping books with detailed accounts of the receipts and expenditures of the Association;

(m) making available to any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules and all other books, records, and financial statements of the Association, as provided in Section 6.7;

(n) permitting utility suppliers to use portions of the Common Elements reasonably necessary to the ongoing development or operation of the Condominium; and

(o) indemnifying a director, officer or ARB or committee member, or former director, officer or ARB or committee member of the Association to the extent such indemnity is required or permitted under Alabama law or the Articles of Incorporation or the Declaration.

3.19. Management. The Association may, but shall not be obligated to, hire a professional management agent or agents, at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board shall use reasonable efforts in any management contract to provide for termination of such written contract, with or without cause and without penalty, upon no more than thirty (30) days' written notice. No management contract shall have a term in excess of one (1) year.

3.20. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

(a) cash basis accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

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

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

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

(f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly (such financial statements shall include an income statement reflecting all income and expense activity for the preceding period on an accrual basis and may include such other reports as deemed necessary the Board); and

(g) an annual financial report made available to all members within one hundred twenty (120) days after the close of the fiscal year and at each Association annual meeting. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, or upon request of a Majority of the Total Eligible Association Vote as set forth in Section 6.6 hereof, the Association shall provide an audited financial statement.

3.21. Borrowing. The Association shall have the power to borrow money for any legal

purpose; provided, however, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall obtain the approval of members representing a Majority of the Total Eligible Association Vote, prior to borrowing such money.

3.22. Right to Contract. The Association, acting through the Board of Directors, shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational or other agreements with trusts, condominiums, cooperatives, or neighborhood and other owners or residents associations, within and outside the Condominium.

3.23. Enforcement.

(a) Notice. Prior to imposition of any sanction requiring compliance with these procedures as set forth in the Declaration, the Board or its delegate shall serve the alleged violator with written notice including (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator may present a written request for a hearing to the Board or its delegate within ten (10) days of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within ten (10) days of the notice. If a timely request is not received, the sanction stated in the notice shall be imposed; provided, however, the Board or its delegate, as the case may be, may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. In the event of a continuing violation, each day the violation continues beyond the ten (10) day period shall constitute a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one (1) year from the date of any notice hereunder, the Board or its delegate may impose a sanction without further notice to the violator.

(b) Hearing. If a hearing is requested within the allotted ten (10) day period, the hearing shall be held before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director or delegate who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board may adopt a schedule of sanctions for violations of the Condominium Instruments.

#### ARTICLE 4: OFFICERS

4.1. Officers. The officers of the Association shall be a president, vice-president, secretary and treasurer. The president and secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one (1) or more vice presidents, one (1) or more assistant secretaries and one (1) or more assistant treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two (2) or more offices may be held by the same person, except the offices of president and secretary.

4.2. Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the members, to serve until their successors are elected.

4.3. Removal and Vacancies. The Board may remove any officer, either with or without cause, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise for the unexpired portion of the term.

4.4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The president shall be the chief executive officer of the Association. The treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The secretary shall keep the minutes of all meetings of the Association and Board of Directors and have charge of such books and papers as the Board of Directors may direct.

4.5. Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, the president or the secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6. Execution of Instruments. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by Board resolution.

4.7. Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.13.

## ARTICLE 5: COMMITTEES

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

## ARTICLE 6: MISCELLANEOUS

6.1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. Parliamentary Rules. Except as may be modified by Board resolution, *Robert's Rules of Order Newly Revised* (current edition) shall govern the conduct of Association proceedings when not in conflict with Alabama law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3. Conflicts. If there are conflicts between the provisions of Alabama law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Alabama law, the Declaration, the Articles of Incorporation and the By-Laws (in that order) shall prevail.

6.4. Severability. The invalidity of any part of these By-Laws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these By-Laws or the Declaration.

6.5. Gender and Grammar. The use of the masculine gender in these By-Laws shall be deemed to include the feminine gender, and the use of the singular shall be deemed to include the plural whenever the context so requires.

6.6. Financial Review. A financial review of the accounts of the Association shall be performed annually in the manner provided by the Board, and a financial statement shall be prepared and presented to the members at the annual meeting. However, after having received the Board's financial statement review at the annual meeting, the members may, by a Majority of the Total Eligible Association Vote, require that the accounts of the Association be audited, as a Common Expense, by an independent accountant. Such statement shall be made available to the holder, insurer or guarantor of any first Mortgage on a Unit upon submission of a written request, and must be available within one hundred twenty (120) days after the fiscal year end of the Association.

6.7. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any member, any Person who has executed a binding contract for the purchase of a Unit, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, By-Laws, and Articles of Incorporation, any amendments to the foregoing, the rules of the Association, books of account, the minutes of meetings of the members, the Board, and committees, and the Association's corporate books and records. The Board shall provide for such inspection to take place during normal business hours or under other reasonable circumstance at the office of the Association or at such other place within the Condominium as the Board shall designate.

(b) Rules for Inspection. In accordance with the foregoing, the Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.8. Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

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

(b) if to the Association, the Board of Directors or the managing agent, at the principal office of the Association or the managing agent, or at such other address as shall be designated by notice in writing to the members pursuant to this section.

6.9. Amendment. Except where a higher vote is required for action under a particular provision of the Declaration or these By-Laws, in which case such higher vote shall be necessary to amend, these By-Laws may be amended by the affirmative vote, written consent, or any combination of affirmative vote and written consent of the members holding sixty-seven percent (67%) of the Total Eligible Association Vote. As long as the Declarant has the right to appoint any director of the Association as provided in Article 20 of the Declaration, any amendment to these By-Laws shall also require the written consent of the Declarant. Notice of any meeting at which an amendment will be considered shall state that fact and the subject matter of the proposed amendment. No amendment shall become effective until it is certified by the president and secretary of the Association and recorded in the Public Records. Any amendment duly certified and recorded shall be conclusively presumed to have been fully adopted in accordance with these By-Laws.

Any action to challenge the validity of an amendment adopted under this section must be brought within one (1) year of the amendment's effective date. No action to challenge any such amendment may be brought after such time.

[CERTIFICATION ON NEXT PAGE]

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting secretary of Village on the Green Condominium Association, Inc., an Alabama nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of the Association, as duly adopted at a meeting of the Board of Directors thereof held on the 4<sup>th</sup> day of April, ~~2004~~ 2005 *kw*

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 4<sup>th</sup> day of April, 2005.

Kathy Wells [SEAL]  
Secretary

Recording Fee 212.00  
TOTAL 212.00

*See + m. d. m. d.*