

THIS INSTRUMENT PREPARED BY:

John R. Baggette, Jr.

Sirote & Permutt, P.C.

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Huntsville, Alabama 35801

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Madison Cnty Judge of Probate, AL  
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**ARTICLES OF INCORPORATION OF  
301 EAST CONDOMINIUM ASSOCIATION, INC.  
A NON PROFIT CORPORATION**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, acting as Incorporator, does hereby form a corporation under the Alabama Nonprofit Corporation Act (Ala. Code §10-3A-1 *et. seq.* (1975)), and adopts the following Articles of Incorporation:

**ARTICLE I - NAME**

The name of this Corporation shall be 301 East Condominium Association, Inc. (hereinafter the "**Corporation**" or the "**Association**").

**ARTICLE II - PERIOD OF DURATION**

The Association shall exist perpetually, unless terminated according to the terms of these Articles.

**ARTICLE III - NOT FOR PROFIT**

This Association is not organized for profit and the purpose for which the Association is organized is to provide an entity pursuant to the Alabama Uniform Condominium Act of 1991, Ala. Code §35-8A-101 *et seq.* (1975) (the "**Condominium Act**"), for the acquisition, operation, management, maintenance, care, control and administration of all those properties known as 301 East, A Condominium, located in Huntsville, Alabama (the "**Condominium**"), pursuant to the Declaration of Condominium of 301 East, A Condominium (the "**Declaration**"), being recorded in the Probate records of Madison County, Alabama, as it may be amended from time to time. Any income received by the Association shall be applied only to the non-profit purposes and objectives of the Association and no part of the net earnings thereof shall inure to the benefit of any private member, officer, director, or individual. This Association shall be without capital stock. The members of this Association shall not be personally liable for the debts, liabilities or obligations of this Association.

**ARTICLE IV - PURPOSES AND POWERS.**

(a) The Association shall have all the common law and statutory powers of a non-profit corporation and shall have all the powers which an association may have or exercise under the Condominium Act, which are not in conflict with the terms of these Articles or the Declaration, as they may be amended from time to time, such powers to include, but not be

limited to the following (with the terms capitalized herein having the meanings set forth in the Declaration or the Condominium Act and to which reference is made hereto):

(i) To acquire, hold, lease, mortgage or convey real, personal or mixed property wherever situated, including, without limit, Units in the Condominium;

(ii) To make and collect assessments against the members as provided in the Declaration to defray the costs, expenses and losses of the Condominium or any other business enterprise, venture or property interest of the Association, and to use the proceeds of the assessments in the exercise of the powers and duties herein provided;

(iii) To borrow funds to pay for such expenditures as may be authorized by the provisions of the Declaration;

(iv) To maintain, repair, replace, clean, sanitize and operate the property of the Condominium or the property of the Association;

(v) To lease or grant easements or licenses for use of the Limited Common Elements or the Common Elements of the Condominium in a manner not inconsistent with the rights of owners of the Units in the Condominium;

(vi) To enforce by legal means the provisions of the Condominium Act, the Declaration, the Articles and Bylaws of the Association, and the rules and regulations for the use of the property of the Condominium or the Association;

(vii) To contract for the management of the Condominium and to delegate to such contractor all powers and duties of the Association, except such as are specifically required to be performed by the Association;

(viii) The objects and purposes set forth in Article III of these Articles shall be construed as powers, as well as objects and purposes and the Association shall have and may exercise such powers as if such powers were set forth in full herein;

(ix) The Association shall have and may exercise all powers as shall enable it to do each and every thing necessary, suitable, convenient, expedient or proper for the accomplishment of any or all purposes and the attainment of any or all objects set forth in Article III and Article IV herein; and

(x) The Association shall have and may exercise all powers set forth in any other Article of these Articles of Incorporation.

(b) All funds and title to properties acquired by the Association and the proceeds therefrom shall be held in trust for the members of the Association in accordance with the provisions of the Condominium Act, the Declaration and the Bylaws of the Association.

## ARTICLE V - MEMBERSHIP

The members of the Association shall consist of all of the record owners of Units in the Condominium and, after termination of the Condominium shall consist of those who are members of the Association at the time of such termination and their heirs, successors, and assigns. Membership in the Association shall be evidenced by a deed or other instrument establishing record title to a Unit in the Condominium recorded in the Probate Office of Madison County, Alabama. Upon such recordation, the Owner of the Unit designated by such instrument shall become a member of the Association and the membership of the prior Owner shall be terminated. The share of a member in the funds or assets of the Association cannot be assigned, hypothecated, or transferred in any manner, except as an appurtenance to the Unit. The number of votes to be cast by Owner(s) of a Unit and the manner of exercising voting rights shall be determined by the Declaration and the Bylaws of the Association.

Notwithstanding the foregoing, any person or entity who holds an interest in a Unit in the Condominium merely as security for the performance of an obligation shall not be a member of the Association, unless and until such security holder or mortgagee has acquired title to the Unit pursuant to foreclosure or any proceeding in lieu thereof and the deed thereby evidencing title has been duly and properly recorded, at which time, such security holder or mortgagee shall become a member and the debtor's membership shall thereupon cease, regardless of whether or not there is an outstanding right of redemption to the Unit.

## ARTICLE VI - DIRECTORS

The affairs of the Association shall be managed by a Board of Directors consisting of the number of Directors as shall be determined in accordance with the Bylaws; provided, however, that the Board of Directors shall consist of not less than three Directors and not more than five Directors. In the absence of a provision in the Bylaws to the contrary, the Board of Directors shall consist of three Directors. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the Bylaws and as limited below. Vacancies on the Board of Directors shall be filled in the manner provided by the Bylaws.

The initial Board of Directors shall have three Directors. The names and addresses of the members of the Board of Directors who shall hold office until their successors are elected and have qualified, or until such Directors are removed, are as follows:

<u>NAMES</u>	<u>ADDRESSES</u>
Stephen F. Thornton	310 Williams Avenue S.E. Huntsville, Alabama 35801
Derek Thornton	600 Clinton Avenue E. Huntsville, Alabama 35801
Sharon Judith Thornton	310 Williams Avenue S.E. Huntsville, Alabama 35801

To the extent permitted by law, the affairs of the Association with respect to matters pertaining to the Commercial Section that do not materially, adversely affect the Residential Section, shall be managed by a Commercial Committee consisting of the number of members as shall be determined by the Bylaws. Vacancies on the Commercial Committee shall be filled in the manner provided by the Bylaws.

To the extent permitted by law, the affairs of the Association with respect to matters pertaining to the Residential Section that do not materially, adversely affect the Commercial Section, shall be managed by a Residential Committee consisting of the number of members as shall be determined by the Bylaws. Vacancies on the Residential Committee shall be filled in the manner provided by the Bylaws.

Notwithstanding the provisions set forth in this Article VI of these Articles or in any provision of the Bylaws granting to the members the right to elect and remove members of the Board of Directors, Thornton Properties, LLC, an Alabama limited liability company (the "**Declarant**"), its successors and assigns, and not the members of the Association, shall have exclusive control of the Board of Directors of the Association by virtue of its exclusive right to elect or appoint, remove, and in the event of vacancies, the Declarant shall have the exclusive right to fill such vacancies in each and every position of the members of the Board of Directors of the Association by written notice to the members stating the names of the persons so elected, appointed or removed, until the earliest to occur of the following: (a) 60 days after 75% of the total number of Units have been conveyed to Owners other than Declarant; (b) ten years have elapsed from the conveyance of the first Unit to an Owner other than Declarant; (c) two years after the date that Declarant has ceased to offer the Units for sale in the ordinary course; or (d) the Declarant elects, at its option, to terminate control of the Association. Notwithstanding and in limitation of the foregoing, (A) within 90 days after the conveyance of 25% of the Units to an Owner other than Declarant, the Owners other than Declarant shall be entitled to elect 25% of the Board of Directors; and (B) not later than 90 days after conveyance of 50% of the Units to Owners other than Declarant, the Owners other than the Declarant shall be entitled to elect not less than one-third of the Board of Directors. Further, the Declarant shall be entitled to elect at least one member of the Board of Directors as long as the Declarant holds for sale in the ordinary course of business at least five percent of the total number of Units within the Condominium. The election of the Board of Directors, other than appointments made by Declarant, shall be held in accordance with the Bylaws.

Other than a Board member elected or appointed by the Declarant (who may be removed solely by the Declarant), any Director may be removed, either with or without cause, at any time, by the affirmative vote of members entitled to cast not less than sixty-seven percent (67%) of the votes of the persons present in person or represented by proxy and entitled to vote at a meeting at which a quorum is present, and the vacancy in the Board caused by any such removal may be filled by the members at such meeting or at any subsequent meeting in the manner prescribed in the Bylaws for the filling of vacancies on the Board.

## **ARTICLE VII - BYLAWS**

(i) By the Declarant until either (i) 60 days after 75% of the total number of Units have been conveyed to Owners other than Declarant, (ii) ten years have elapsed from the conveyance of the first Unit to an Owner other than Declarant, (iii) two years after the date that Declarant has ceased to offer the Units for sale in the ordinary course, or (iv) the Declarant elects, at its option, to terminate control of the Association, whichever shall first occur; and

(ii) Thereafter, by the members at any regular or special meeting upon the affirmative vote of the holders of not less than 67% of the outstanding votes present at such meeting in person or represented by proxy, a quorum being present.

## **ARTICLE VIII - AMENDMENTS**

The Association reserves the right to amend, alter, change or repeal any provision contained in these Articles in the manner now or hereafter provided by law and all rights conferred upon officers and Directors herein are granted subject to this reservation.

## **ARTICLE IX - REGISTERED OFFICE AND AGENT**

The address of the Association's initial registered office is c/o Sirote & Permutt, P.C., 305 Church Street, Suite 800, Huntsville, Alabama 35801, and the name of its initial registered agent at such address is John Baggette.

## **ARTICLE X - RELATED PARTY TRANSACTIONS**

No contract or other transaction between the Association or any person, firm, association or corporation and no other act of the Association shall, in the absence of fraud, be invalidated or in any way affected by the fact that any of the Directors of the Association are directly or indirectly, pecuniarily or otherwise interested in such contract, transaction or other act, or are related to or interested in (either as director, stockholder, officer, employee, member or otherwise) such person, firm, association or corporation. Any Director of the Association individually, or any firm or association of which any Director may be a member, may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Association, provided that the fact that he, individually, or such firm or association is so interested, shall be disclosed or known to the Board of Directors or a majority of the members thereof as shall be present at any meeting of the Board of Directors or of any committee of Directors having the powers of the full Board, at which action upon any such contract, transaction or other act is taken, and if such fact shall be so disclosed or known, any Director of the Association so related or otherwise interested may be counted in determining the presence of a quorum of any meeting of the Board of Directors or of such committee, at which action upon any such contract, transaction or act shall be taken, and may vote with respect to such action with like force and effect as if he were not so related or interested. Any Director of the Association may vote upon any contract or other transaction between the Association and any affiliated corporation without regard to the fact that he is also a director of such affiliated corporation.

## ARTICLE XI - INDEMNIFICATION

(a) The Association shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action, suit or proceeding, whether civil, criminal, administrative or investigative, including appeals (other than an action by or in the right of the Association), by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such claim, action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any claim, action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was not unlawful.

(b) The Association shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed claim, action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

(c) To the extent that a director, officer, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in paragraphs (a) and (b) of this Article, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith, notwithstanding that he has not been successful on any other claim, issue or matter in any such action, suit or proceeding.

(d) Any indemnification under the paragraphs (a) and (b) of this Article (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee or agent is

proper in the circumstances because he has met the applicable standard of conduct set forth in this Article. Such determination shall be made in the manner provided by law.

(e) Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit or proceeding may be paid by the Association in advance of the final disposition of such claim, action, suit or proceeding as authorized by the Board of Directors in each specific case upon receipt of a written affirmation of good faith belief by or on behalf of the director, officer, employee or agent that he has met the required standard of good conduct together with his written undertaking and unlimited obligation to repay such amount if and to the extent that it shall be ultimately determined that he is not entitled to be indemnified by the Association as authorized in this Article.

(f) The indemnification authorized by this Article shall not be deemed exclusive of and shall be in addition to any other right (whether created prior or subsequent to the recording of these Articles) to which those indemnified may be entitled under any statute, rule of law, provisions of articles of incorporation, bylaw, agreement, vote of members or of disinterested directors, or otherwise, both as to action in his official capacity and as to actions in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) The Association shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, partner, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provision of this Article.

## **ARTICLE XII - DISSOLUTION**

The Association may be dissolved only upon the affirmative vote of members entitled to cast not less than sixty-seven percent (67%) of the votes of its membership present in person or represented by proxy and entitled to vote at a meeting called as provided for herein, at which a quorum is present. Written notice of a proposal to dissolve, setting forth the reasons therefor and the disposition to be made of the assets (which shall be in accordance with Article XII hereof) shall be mailed to every member at least thirty (30) days in advance of any such action sought and shall be subject to prior approval of such dissolution by the Board of Directors in the manner required by the Alabama Non Profit Corporation Act.

## **ARTICLE XII - DISTRIBUTION UPON DISSOLUTION**


Upon the dissolution of the Association, the assets of the Association shall be distributed to the members in the same manner as provided in the Declaration for the distribution of property subject thereto upon termination of the Condominium to the extent that any such distribution is not inconsistent with the provisions of the Condominium Act.

**ARTICLE XIII - NAME AND ADDRESS OF INCORPORATOR**

The name and address of the incorporator is as follows:

John R. Baggette, Jr.  
Sirote & Permutt, P.C.  
305 Church Street,, Suite 800  
Huntsville, Alabama 35801

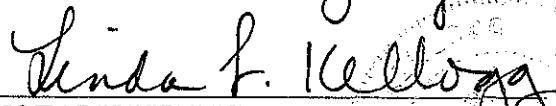
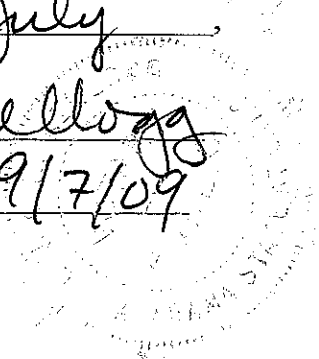
IN WITNESS WHEREOF, this Incorporator files these Articles of Incorporation and tenders to the Probate Judge of Madison County, Alabama, the lawful fees and charges therefor and prays that these Articles may be examined and approved and that the Association may be deemed to be incorporated for the purposes herein set forth. The undersigned Incorporator has hereunto set his hand and seal on this the 19<sup>th</sup> day of July, 2007.

  
\_\_\_\_\_  
John R. Baggette, Jr.

STATE OF ALABAMA  
COUNTY OF MADISON

I, the undersigned, a Notary Public in and for said County, in said State, hereby certify that John R. Baggette, Jr., whose name is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he executed the same voluntarily on the day same bears date.

Subscribed and sworn to before me on this 19<sup>th</sup> day of July, 2007.

  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: 9/7/09  




STATE OF ALABAMA  
MADISON COUNTY

OFFICE OF THE JUDGE OF PROBATE

CERTIFICATE OF INCORPORATION

OF

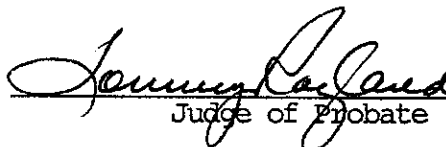
301 East Condominium Association, Inc.

I, the undersigned, Judge of Probate, Madison County, Alabama here certify that Articles of Incorporation for the incorporation of 301 East Condominium Association, Inc. duly signed pursuant to the provisions of the Code of Alabama, have been received in this office and found to conform to law and that the name of the corporation is now reserved with the Secretary of State of Alabama under reservation No. \_\_\_\_\_ dated \_\_\_\_\_.

ACCORDINGLY, the undersigned, as such Judge of Probate, and by virtue of the authority vested in me by law, hereby issue this Certificate of Incorporation of 301 East Condominium Association, Inc. and attached hereto a certified copy of the Articles of Incorporation.

Dated July 19, 2007.

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Madison Cnty Judge of Probate, AL  
07/19/2007 04:01:19PM FILED/CERT

  
\_\_\_\_\_  
Judge of Probate