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**DECLARATION OF CONDOMINIUM
OF
301 EAST, A CONDOMINIUM**

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STATE OF ALABAMA
COUNTY OF MADISON

**DECLARATION OF CONDOMINIUM OF
301 EAST, A CONDOMINIUM**

THIS DECLARATION OF CONDOMINIUM OF 301 EAST, A CONDOMINIUM (this "Declaration") is made as of July 3, 2007, by **THORNTON PROPERTIES, LLC**, an Alabama limited liability company (the "Declarant"), for the Declarant and the successors, grantees and assigns of the Declarant.

RECITALS

1. The Declarant is the fee simple owner of that certain parcel of real property situated in Madison County, Alabama, more particularly described in Article 3 of this Declaration (the "Real Property").
2. The Declarant intends to improve the Real Property in the manner set out in this Declaration.
3. The Declarant proposes to establish a condominium to be known as **301 East, A Condominium**, pursuant to the provisions of the Ala. Code §35-8A-101 *et seq.* (1975) known as the Alabama Uniform Condominium Act of 1991, but reserves the right and option, in the sole discretion of Declarant, to amend this Declaration, without the consent of any Unit Owner, Eligible Mortgagee or other Person to exercise any Development Rights or Special Declarant Rights as described in this Declaration. The Declarant shall have the unilateral right, privilege and option to exercise any Development Rights or Special Declarant Rights as provided for in this Declaration.
4. The Declarant may improve 301 East, A Condominium when exercising any Development Rights or Special Declarant Rights as provided for in this Declaration.
5. The initial development of 301 East, A Condominium will consist of one Building containing a total of 21 Residential Units and one Commercial Unit, together with access, parking, Common Elements, Limited Common Elements and other appurtenant facilities as provided for in this Declaration.
6. 301 East, A Condominium will be created by recording this Declaration, which may be amended by the Declarant as provided in this Declaration.

NOW, THEREFORE, the Declarant makes the following Declaration:

ARTICLE 1
DEFINITIONS

The terms used in this Declaration and in the Bylaws shall have the meanings stated in Ala. Code §35-8A-101 *et seq.* (1975) and in this Declaration, unless the context clearly indicates a different meaning therefor:

(a) “**301 East**” and “**301 East, A Condominium**” means the Condominium and consists of the Real Property and Improvements submitted to the Condominium by this Declaration.

(b) “**Act**” means Ala. Code §35-8A-101 *et seq.* (1975) known as the Alabama Uniform Condominium Act of 1991, as the same may be amended from time to time.

(c) “**Architectural Committee**” means the committee created pursuant to this Declaration to review and approve Plans and Specifications for the construction of interior improvements to a Unit.

(d) “**Association**” means 301 East Condominium Association, Inc., an Alabama nonprofit corporation organized pursuant to the Alabama Nonprofit Corporation Act, of which all Owners shall be members and which corporation shall administer the operation, management, maintenance, control and administration of the Condominium Property.

(e) “**Board of Directors**” or “**Board**” means the Board of Directors of the Association, elected pursuant to the Bylaws of the Association.

(f) “**Building**” means all structures or structural Improvements located on the Real Property and forming a part of the Condominium.

(g) “**Bylaws**” means the Bylaws of the Association, a copy of which is attached hereto as Exhibit “B”, recorded simultaneously with this Declaration, providing for the self-government of the Condominium Property by the Association in accordance with §35-8A-306 of the Act, and such amendments thereto as may be recorded from time to time pursuant to the provisions of the Act.

(h) “**Certification**” means the Certification referred to in Section 3.1 of this Declaration.

(i) “**Commercial Limited Common Elements**” means those Limited Common Elements that are appurtenant to or serve or benefit exclusively the Commercial Section as designated on the Plans, including commercial electric meter, separate cold water meter, gas meter and other utility meters (if any) serving or available for the exclusive use of the Commercial Section, all exterior glass surfaces of all windows in the Commercial Section, ductwork, and all other HVAC and electric and similar facilities, which serve or benefit or are necessary or convenient for the existence, maintenance, operation or safety of the Commercial Section.

(j) **“Commercial Section”** means, collectively, all of the Commercial Units and the Commercial Limited Common Elements.

(k) **“Commercial Unit”** means the Commercial Unit designated on the Plans attached to this Declaration as Unit 1 and as described in this Declaration and the Plans. The Commercial Units shall be located on level one or ground level in the Building. The Commercial Units enumerated in this Declaration and other matters pertaining to the Commercial Units will be further defined and described in this Declaration. The Declarant shall have the right to exercise the Development Rights and the Special Declarant Rights as provided for in this Declaration by adding additional Units, Common Elements and Limited Common Elements as provided for in this Declaration and as described in any Supplemental Declaration filed by Declarant in accordance with the terms of this Declaration.

(l) **“Common Elements”** means all portions of the Condominium Property that are not Private Elements or Units, including the following:

- (i) the Real Property;
- (ii) the foundations and footings, load bearing walls, perimetrical walls, structural slabs, columns, beams, supports and other Improvements that are not part of the Units;
- (iii) the roofs, lobbies, elevator, common area mechanical equipment and systems, and storage areas designated as common elements or common areas, ramps, handrails, sidewalks, stairways and entrances and exits or communication ways as designated on the Plans;
- (iv) all parking areas (even if assigned to the exclusive use of one or more Units), driveways and other means of ingress and egress (see Section 7.2(m) of this Declaration for restrictions on parking);
- (v) the compartments or installations of central services such as air conditioning, ventilation, heating, power, light, electricity, telephone and television cables, gas, fire protection, security, cold and hot water, plumbing, reservoirs, water tanks and pumps, storm drains, sewer lines, flues, trash chutes and compactors, pipes, ducts, flutes, chutes, conduits, cables, wires and the like, and all similar devices and installations existing for common use, but excluding all compartments or installations of utilities and services which exist for private use in the Units;
- (vi) the premises and facilities, if any, used for the maintenance or repair of the Condominium Property;
- (vii) all common recreational facilities such as any game, entertainment, meeting or assembly rooms, exercise or fitness room, and surrounding grounds, sun deck, yards and walkways, as depicted on the Plans if any;

(viii) all sidewalks, lawn areas, landscaping, trees, curbs, walkways, streets, greens, gardens, yards, landscaping, storage sheds, central mail boxes, security areas, and service streets;

(ix) all outdoor and exterior lights and interior lights that are not metered to individual Units;

(x) all entrance and related type signs;

(xi) all easements, rights or appurtenances affecting or relating to the use of the Condominium Property unless specifically included in any Unit;

(xii) all Limited Common Elements; and

(xiii) all other elements (other than Private Elements and Units) desirable or rationally of common use or necessary to the existence, upkeep and safety of the Condominium Property.

(m) **“Common Expenses”** means the expenditures made by or financial liabilities of the Association, together with any allocations to reserves, arising out of the operation and ownership of the Common Elements for which the Owners are liable to the Association, including expenses of administration of the Condominium Property; expenses of insurance; expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation and betterment of the Common Elements and any portion of a Unit maintained by the Association; any valid charge against the Condominium Property as a whole; and expenses declared to be Common Expenses by the provisions of the Condominium Documents, as the same may be amended, from time to time, in accordance with the provisions thereof; provided that the Common Expenses shall not include the Limited Common Expenses or any charges imposed upon individual Owners under the Condominium Documents for usage of various components of the Common Elements.

(n) **“Common Surplus”** means the excess of all the receipts of the Association, including assessments, rents, profits and revenues, over the amount of the Common Expenses.

(o) **“Condominium”** means 301 East, A Condominium, and is described in this Declaration.

(p) **“Condominium Documents”** means this Declaration, the Bylaws, the Articles of Incorporation of the Association and the Rules and Regulations and all exhibits attached to the foregoing, as the same may be amended from time to time.

(q) **“Condominium Property”** means all property, real, personal or mixed, which is submitted to 301 East, A Condominium as provided for in this Declaration and includes the Real Property, the Building and all other Improvements located on the Real Property, and all easements, rights, riparian rights, interests or appurtenances to the Real Property, and all personal property used in connection with the Condominium Property.

(r) **"Declarant"** means THORNTON PROPERTIES, LLC, an Alabama limited liability company, and the successors, grantees and assigns of the Declarant, who shall receive by assignment from Declarant or by foreclosure or any other judicial transfer to any Eligible Mortgagee hereunder, specifically including First Commercial Bank, all, or a portion, of the rights of the Declarant as set out in this Declaration as the Declarant, by an instrument expressly assigning such rights to such successor, grantee or assignee; provided that it is understood that, as to the property mortgaged to First Commercial Bank, or any other Eligible Mortgagee of Declarant, upon any foreclosure or similar action by First Commercial Bank or any other Eligible Mortgagee of Declarant, the purchaser of such property shall automatically succeed to all rights of the Declarant hereunder relating to such property.

(s) **"Declaration of Condominium"** or **"Declaration"** means this instrument and all Exhibits hereto as it may, from time to time, be amended.

(t) **"Development Rights"** shall have the same meaning as defined in the Act and as set out in this Declaration.

(u) **"Eligible Mortgagee"** means a holder of a Mortgage or any insurer or guarantor of a holder of a Mortgage which has given written notice to the Association of the name and address of said Eligible Mortgagee and its status as a holder, insurer or guarantor of a Mortgage. Such notice shall be deemed to include a request that the Eligible Mortgagee to be given the notices and other rights described in this Declaration.

(v) **"First Commercial Bank"** means First Commercial Bank, an Alabama banking corporation, its successor and assigns.

(w) **"General Assessment"** means the amount allocated among all of the Units to meet the Association's annual budgeted Common Expenses, as described in Section 5.5.

(x) **"Improvements"** means all buildings, structures, structural improvements and all other permanent fixtures located on the Real Property and forming a part of the Condominium.

(y) **"Individual Unit Assessment"** means a charge made to a particular Owner for charges relating only to his Unit, as provided in Section 5.8.

(z) **"Limited Common Elements"** means and includes any areas designated by this Declaration as Limited Common Elements, and any areas defined in the Act as Limited Common Elements for the exclusive use of one or more, but fewer than all, of the Owners of Units, including the Commercial Limited Common Elements and the Residential Limited Common Elements. The Limited Common Elements include all areas so designated on the Plans and described in this Declaration, including, but not limited to, patios, balconies, terraces or porches abutting each Unit, all of which are more particularly described in this Declaration. The Declarant shall have the right to exercise the Development Rights and the Special Declarant Rights provided for in this Declaration by adding additional Units, Common Elements and Limited Common Elements as provided for in this Declaration and as described in any Supplemental Declaration filed by Declarant in accordance with the terms of this Declaration.

(aa) **"Limited Common Expenses"** means the expenses arising out of the ownership and operation of the Limited Common Elements for which the Owners of the Limited Common Elements are liable on a pro rata basis to the Association, including the expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation, and betterment of the Limited Common Elements; and expenses declared to be Limited Common Expenses by the provisions of the Condominium Documents, as the same may be amended, from time to time, in accordance with the provisions thereof. The Limited Common Expenses shall not include charges imposed upon the Owners of the Limited Common Elements under the Condominium Documents for the usage of various components of the Limited Common Elements.

(bb) **"Mortgage"** means a first lien mortgage on one or more Units.

(cc) **"Owner"** or **"Unit Owner"** means, the record owner of a Unit.

(dd) **"Ownership Percentage"** means the percentage of undivided ownership interest allocated to each Unit in and to the Common Elements and any Common Surplus and the percentage of liability allocated to each Unit for the Common Expenses as set forth on Exhibit "C" attached hereto, as the same may be revised from time to time in accordance with this Declaration and the Act.

(ee) **"Person"** means a natural person, a corporation, a partnership, a limited liability company, a limited liability partnership, the Association, a trustee or other legal entity.

(ff) **"Plans"** means the site plan, floor plans and elevations of 301 East, A Condominium prepared by an independent registered engineer or registered architect, which are marked as Exhibit "D" and attached to this Declaration and expressly made a part hereof. The Plans contain a Certification executed by an independent registered engineer or registered architect in accordance with this Declaration and the Act. The Plans contain a Certification that the Plans contain all information required by the Act. The Declarant shall have the right to exercise the Development Rights and the Special Declarant Rights as provided for in this Declaration and in exercising said Development Rights and the Special Declarant Rights may amend the Plans as provided for in this Declaration and as described in any Supplemental Declaration filed by Declarant in accordance with the terms of this Declaration.

(gg) **"Plans and Specifications"** means any and all documents designed to guide or control the construction or erection of any improvement to the interior of a Unit, including those indicating location, size, shape, configuration, materials, floor plans, specifications on all building products and construction techniques, samples of colors, plan for utility services, and all other documentation or information relevant to such improvement.

(hh) **"Private Parking Spaces"** means, individually and collectively, the parking spaces described in the Plans and in Section 3.11 herein.

(ii) **"Probate Office"** means the Office of the Judge of Probate of Madison County, Alabama.

(jj) **"Real Property"** means the Real Property situated in Madison County, Alabama, which is more particularly described in Article 2 of this Declaration and submitted to 301 East, A Condominium as provided for in this Declaration.

(kk) **"Residential Limited Common Elements"** means those Limited Common Elements that are appurtenant to or serve or benefit exclusively all of the Residential Units as designated on the Plans.

(ll) **"Residential Section"** means, collectively, all of the Residential Units and the Residential Limited Common Elements.

(mm) **"Residential Unit"** means the Residential Units designated on the Plans attached to this Declaration as Unit 2A, Unit 2B, Unit 2C, Unit 2D, Unit 3A, Unit 3B, Unit 3C, Unit 3D, Unit 4A, Unit 4B, Unit 4C, Unit 4D, Unit 5A, Unit 5B, Unit 5C, Unit 5D, Unit 6A, Unit 6B, Unit 6C, Unit 6D and Unit 7 (Penthouse) and as described in this Declaration. The Residential Units shall be located on levels two through seven, inclusive, in the Building. The Residential Units enumerated in this Declaration and other matters pertaining to the Residential Units will be further defined and described in this Declaration. The Declarant shall have the right to exercise the Development Rights and the Special Declarant Rights as provided for in this Declaration by adding additional Units, Common Elements and Limited Common Elements as provided for in this Declaration and as described in any Supplemental Declaration filed by Declarant in accordance with the terms of this Declaration.

(nn) **"Rules and Regulations"** means those Rules and Regulations which may be adopted by the Declarant or the Association as provided for in this Declaration. The Declarant shall have the right to exercise the Development Rights and the Special Declarant Rights as provided for in this Declaration and in exercising said Development Rights and the Special Declarant Rights may amend the Rules and Regulations as provided for in this Declaration and as described in any amended Rules and Regulations or any Supplemental Declaration filed by Declarant in accordance with the terms of this Declaration. A copy of the initial Rules and Regulations adopted by the Declarant is attached hereto as Exhibit "G".

(oo) **"Section Assessment"** means the amount allocated by the Board to either (i) all of the Units in the Residential Section, or (ii) all of the Units in the Commercial Section, in either case, as described in Section 5.7.

(pp) **"Special Assessment"** means an amount charged to each Unit for capital improvements or emergency expenses, in accordance with the provisions of Section 5.6.

(qq) **"Special Declarant Rights"** shall have the same meaning as defined in the Act and as set out in this Declaration.

(rr) **"Supplemental Declaration"** means any Supplemental Declaration, whether one or more, which amends this Declaration, the Plans, the Rules and Regulations or any other Condominium Documents for any purpose, including, but not limited to, the purpose of exercising any of the Development Rights and the Special Declarant Rights as provided for in this Declaration.

(ss) **“Supplemental Plans”** means the site plan, floor plans and elevations of 301 East, A Condominium prepared by an independent registered engineer or registered architect, which may be attached to any Supplemental Declaration amending this Declaration, the Plans, the Rules and Regulations or any other Condominium Documents for any purpose, including, but not limited to, the purpose of exercising any of the Development Rights and the Special Declarant Rights as provided for in this Declaration.

(tt) **“Unit” or “Private Element”** means the Commercial Units and the Residential Units as described in this Declaration. Unit or Private Element shall have the same meaning as defined in the Act and as described in this Declaration. Unless and until the Declarant shall exercise the Development Rights and the Special Declarant Rights as provided for in this Declaration, there shall be two types of Units in 301 East, namely Residential Units, which will be used for single-family residential purposes as further defined and described in this Declaration, and the Commercial Units, which will be used for commercial purposes as further defined and described in this Declaration. The Declarant shall have the right to exercise the Development Rights and the Special Declarant Rights as provided for in this Declaration by adding additional Units, Common Elements and Limited Common Elements as provided for in this Declaration and as described in any Supplemental Declaration filed by Declarant in accordance with the terms of this Declaration.

ARTICLE 2

NAME; SUBMISSION OF REAL PROPERTY TO THIS DECLARATION AND ENCUMBRANCES TO TITLE

2.1 **Name.** The name by which the Condominium is to be known is 301 East, A Condominium. 301 East is located at 301 East Holmes Avenue, in the City of Huntsville, County of Madison, the State of Alabama.

2.2 **The Real Property.** The Real Property, which is submitted to 301 East, A Condominium by this Declaration, is that parcel of Real Property located in Madison County, Alabama, and more particularly described on Exhibit “A” attached hereto. The Real Property includes all Improvements now or hereafter located on the real property described on Exhibit “A” attached hereto, and all easements, rights, riparian rights, interests and appurtenances to said real property.

2.3 **Submission.** The Declarant hereby submits the Real Property, together with all Buildings, Improvements and other permanent fixtures on the Real Property, and all rights and privileges belonging or in any way pertaining to the Real Property, to 301 East, A Condominium in the manner provided for in this Declaration and the Act.

2.4 **Encumbrances to Title.** The title to the Real Property is subject to the easements, restrictions, reservations and rights-of-way and other matters referenced on Exhibit “E” attached hereto.

ARTICLE 3
PLANS, UNITS AND EASEMENTS

3.1 **Plans.** The Building and the Improvements are substantially completed in accordance with the Plans attached to this Declaration, as evidenced by the Certification of the same executed by an independent registered architect or registered engineer.

3.2 **General Description of Improvements.** Unless and until the Declarant exercises any of the Development Rights or Special Declarant Rights provided for in this Declaration and in the Act, the initial development of 301 East, A Condominium shown on the Plans attached to this Declaration generally consists essentially of one Building, together with covered and uncovered automobile parking areas, lawn and landscaping and other facilities and Common Elements and Limited Common Elements as more particularly described in this Declaration and the Plans. The Building consists of seven levels (stories), including one ground level. Each of the first six levels are full levels and the seventh level is a partial level. The first level or ground level contains one Commercial Unit, covered parking areas under the Building for some of the Residential Units, storage areas, mechanical areas and other parking spaces located on the Real Property that are neither covered nor under the Building. The second through the seventh levels, inclusively, contain 21 Residential Units. All levels of the Condominium contain Common Elements and common property and equipment. There is a total of 21 residential and 1 commercial Units for a total of 22 Units.

3.3 **Identification of Units (Private Elements).** The Plans contain a description of the Real Property and Improvements thereon and a graphic description of the Improvements in which the Units are located identifying each Unit by a number or letter or combination of numbers and letters so that no Unit bears the same designation as any other Unit, all in sufficient detail to identify each Unit, the Common Elements, the Limited Common Elements, including the Commercial Limited Common Elements and the Residential Limited Common Elements, and their relative locations and approximate dimensions. The legal description of each Unit shall consist of number or letter or combination of numbers and letters as shown on the Plans, the name 301 East, A Condominium, and shall refer to Madison County, Alabama and the Probate Office, and the recording reference of this Declaration. The description and location of the particular Units and the appurtenances thereto are determined with the aid of the Plans.

3.4 **The Plans.** The Plans contain a description of the Real Property and Improvements thereon and a graphic description of the Improvements in which the Units are located identifying each Unit by a number or letter or combination of numbers and letters so that no Unit bears the same designation as any other Unit, all in sufficient detail to identify each Unit, the Common Elements, the Limited Common Elements and their relative locations and approximate dimensions. The legal description of each Unit shall consist of a number or letter or combination of numbers and letters as shown on the Plans, the name 301 East, A Condominium, and shall refer to Madison County, Alabama and the Probate Office, and the recording reference of this Declaration. The description and location of the particular Units and the appurtenances thereto are determined with the aid of the Plans.

3.5 **Boundaries of Units (Private Elements).** Each Unit shall include that part of the Building containing such Unit that lies within the following boundaries:

(a) Upper and Lower Boundaries. The upper and lower boundaries of each Unit shall be the following boundaries extended to their planar intersections with the perimetrical boundaries:

(i) Upper Boundaries. The horizontal plane of the lowermost unfinished surface of the gypsum board ceiling of the Unit.

(ii) Lower Boundaries. The horizontal plane of the uppermost surface of the concrete subfloor of the Unit.

(iii) Interior Divisions. Except as provided in subsections (i) and (ii) above, no part of the nonstructural interior walls shall be considered a boundary of a Unit.

(b) Perimetrical Boundaries. The perimetrical boundaries of the Unit shall be the vertical planes of the Unit side of the glass or the inside surface of the concealed block work of the exterior walls (perimeter columns not included) to the centerline of the partitions separating one Unit from another Unit or from any Common Elements or to the Unit side of the opposite exterior walls extended to their planar intersections with each other and with the upper and lower boundaries of the Unit.

(c) Apertures. Where there are apertures in any boundary, including, but not limited to, windows, bay windows, doors and skylights, such boundaries shall be extended to include the bay windows, doors and skylights and other fixtures located in such apertures, including all frameworks thereof; provided that exterior surfaces made of glass or other transparent material and the existence of doors shall not be included in the boundaries of the Unit and shall, therefore, be Common Elements.

(d) Physical Location to Control. In the event that the actual physical location of any Unit constructed within the Building at any time does not precisely coincide with the area depicted on the Plans, the actual physical location of the Unit shall control over locations, dimensions and descriptions reflected on the Plans.

Notwithstanding the fact that no Unit may be divided or partitioned for purposes of sale or lease, a Unit may be combined with either the Unit directly above the subject Unit and/or the Unit directly below the subject Unit and/or the laterally-adjacent Unit in order to permit occupancy of such areas as one residential living space. Such a combination of Units shall be for purposes of occupancy and use only and shall not be deemed an amendment to this Declaration. Further, any such combination shall not materially alter or modify the configuration or size of a Unit. No combination of Units for purposes of occupancy shall be permitted without the prior written consent of the Declarant (for so long as the Declarant owns any Units) and the Association (upon such time as the Declarant no longer owns any Units).

3.6 **Changes.** The Development Rights and Special Declarant Rights reserved to the Declarant to alter the boundaries between Units and between Units and the Common Elements, the Limited Common Elements or both shall be reflected by an amendment to this Declaration, which may be executed by Declarant alone, notwithstanding the procedures described for amendments described in this Declaration; provided that no such change of boundaries shall

increase the number of Units nor increase the share of the Common Elements to any Unit other than Units owned by the Declarant without amendment of this Declaration in the manner described in this Declaration.

3.7 Limited Common Elements. To the extent applicable and subject to the provisions of this Declaration, each Unit may have, as Limited Common Elements assigned thereto, such portions of the Limited Common Elements as are defined herein and/or shown on the Plans, including, but not limited to, the following:

(i) Private Parking Spaces. Each Private Parking Space assigned to a Unit pursuant to this Declaration and the Plans are assigned as Limited Common Elements to such Units;

(ii) Parking Space for Unit 2D and Unit 3D. No Private Parking Spaces are assigned to Unit 2D and Unit 3D and off site parking for Unit 2D and Unit 3D must be obtained off site by the Unit Owner.

(iii) Utility Meters. Any utility meter which serves only one Unit is assigned as a Limited Common Element to the Unit which it serves;

(iv) Light and Electrical Fixtures. Light and electrical fixtures outside a Unit or attached to the exterior walls of the Building, which fixtures are designed to exclusively serve and benefit such Unit;

(v) Air Conditioning Equipment Structure(s). The structure(s) located on or adjacent to the exterior of the Building on which is located any air conditioning equipment that serves the Unit;

(vi) Security Installations. Any and all installations for security purposes that are designed to exclusively serve a Unit; and

(vii) Patio, Balcony, Terrace or Porch. The patio, balcony, terrace or porch abutting a Unit are Limited Common Elements appurtenant to those Units to which they attach and whose use is restricted to the Units to which they are appurtenant. Doorsteps or stoops, if any, providing access to a patio, balcony, terrace, or porch, are assigned as a Limited Common Element to the Unit to which the patio, balcony, terrace or porch serves. The patio, balcony, terrace or porch abutting each Unit may not be transferred separate and apart from the Unit to which it is appurtenant.

(viii) Mailbox or Slots. Each Unit is assigned one mailbox or slot as a Limited Common Element to be initially assigned by the Board in its sole discretion.

3.8 Common Elements. Any right, title or interest in a Unit shall automatically carry with said Unit, as an appurtenance and without the necessity of specific reference, an undivided share in the Common Elements equal to the Ownership Percentage of said Unit and a right to use the Common Elements (subject to the right to possess the Limited Common Elements as described in this Declaration) in conjunction with the other Owners. The Common Elements are

all portions of the Condominium Property other than the Units and will include the common areas and facilities located substantially as shown on the Plans.

3.9 **Easements and Restrictions.** The Units and the Common Elements shall be, and the same are hereby declared to be, subject to the restrictions, easements, conditions and covenants prescribed and established in this Declaration and the Plans governing the use of the ownership of each Unit and its appurtenant undivided interest in the Common Elements, including the following:

(a) Utility Easements. Utility easements are reserved throughout the whole of the Condominium Property, including Units, as may be required for utility services (including, without limitation, water, sewer, gas, electricity, telephone and cable television) in order to adequately serve the Condominium Property.

(b) Utility Equipment. There may be utility equipment located on the Common Elements appurtenant to some Units. An easement is hereby reserved in favor of each Unit for the purpose of placement, maintenance, repair and replacement of said utility equipment by Declarant and the Owners of the appurtenant Unit; provided that no utility equipment shall be placed in any part of the Common Elements or Limited Common Elements other than the present location unless the written approval of the Association shall have first been obtained.

(c) Easements for Ingress and Egress. The Common Elements shall be, and the same are hereby declared to be, subject to an easement of ingress and egress over all roads, parking areas, walkways, halls, stairways, elevators, and other common areas in favor of all Owners for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners, subject to all restrictions in the Condominium Documents; provided that such easement shall not give or create in any Person the right to park on any portion of the Condominium Property nor shall said easement give or create in any Person the right to use or occupy any Limited Common Element designated in this Declaration or other Condominium Documents or by the Declarant or the Association for the exclusive use of one or more, but not all, of the Owners. This easement shall be nonexclusive and perpetual and shall include the right of ingress and egress to a public street or highway upon and over the Common Elements providing such access and as shown on the Plans.

(d) Easement for Use of Leased or Acquired Condominium Property. Each Unit Owner shall have a nonexclusive easement for use of any property hereafter acquired by the Association for the common benefit of the Owners by purchase, lease or otherwise for all normal and proper purposes for which the same are reasonably intended, subject to all restrictions in the Condominium Documents and the Rules and Regulations.

(e) Easements for Encroachments. To the extent that any Unit or Common Element encroaches on any other Unit or Common Element, whether by reason of any deviation from the Plans in the original construction, repair, renovation, restoration or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement shall exist for the encroachment and the maintenance of the same, so long as the encroaching Unit or Common Element stands. A valid easement shall not relieve an Owner of liability for his or his agent's negligence or intentional acts in cases of willful and intentional

misconduct by him or his agents or employees. In the event any Unit, any adjoining Unit, or any adjoining Common Elements shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then constructed, reconstructed or repaired, encroachment of parts of the Common Elements upon any Unit or of any Unit upon any of the other Unit or Common Elements resulting from such construction, reconstruction or repair shall be permitted, and valid easements for such encroachment and the maintenance thereof shall exist so long as the encroaching Improvements shall stand.

(f) Easement of Support. Each Unit and the Common Elements shall have an easement of support from every other Unit and the Common Elements that provide such support therefor.

(g) Easement for Use of Limited Common Elements. Each Owner of the Limited Common Elements shall have an easement for the repair, maintenance and upkeep of the Limited Common Elements appurtenant to such Owner's Unit and for vehicular and pedestrian ingress and egress to and from the Limited Common Elements for so long as the Limited Common Elements exist. The aforesaid easement shall be for the benefit of each Owner of the Limited Common Elements and its lessees, licensees and invitees.

(h) Easements Appurtenant to Units. The easements and other rights created herein for the Unit Owners shall be appurtenant to the Unit of that Owner and all conveyances of title to the Unit shall include a conveyance of the easements and rights as are herein provided even though no specific reference to such easements and rights appear in such instrument. The Owners do hereby designate the Declarant and the Association as their lawful attorney in fact to execute any and all instruments on their behalf for the purpose of creating all such easements as are contemplated by the provisions hereof.

(i) Use of Residential Limited Common Elements. Except as set forth in this Declaration, each Residential Unit Owner shall have, in common with all other Residential Unit Owners, an easement for the use of the Residential Limited Common Elements. The Commercial Section and the Residential Section shall be subject to such easement.

(j) Use of Commercial Limited Common Elements. Except as set forth in this Declaration, each Commercial Unit Owner shall have, in common with all other Commercial Unit Owners, an easement for the exclusive use of the Commercial Limited Common Elements. The Commercial Section and the Residential Section shall be subject to such easement.

(k) Other Restrictions, Easements, Conditions and Limitations of Record. The Units and the Common Elements are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the Condominium Property, which easements and restrictions include those shown on the Plans and those certain restrictions, easements, conditions and limitations of record described in Exhibit "E" attached hereto.

3.10 Units in the Residential Section. Subject to the right of Declarant to exercise certain Development Rights and Special Declarant Rights described in this Declaration and the Act to add additional Units, Common Elements and Limited Common Elements to 301 East, A Condominium, the initial development of 301 East, A Condominium shall contain five types of

single-family Residential Units. There are five basic floor plans for the Residential Units with square footage representing approximate measurements from the center line of the common (party) walls to the interior surface of the exterior walls. All Units in the Residential Section of the initial development of 301 East, A Condominium are shown on the Plans, are single-family Residential Units and are generally described as follows:

(i) Basic Unit type "Lincoln" is a two bedroom, two and one-half bathroom Unit, containing a study, kitchen, dining and living areas, containing approximately 1,724 square feet and a balcony of approximately 70 square feet serving the Unit as a Limited Common Element. There is one type "Lincoln" Unit identified as Unit "C" on each level two through six, inclusive, for a total of five type Lincoln Units.

(ii) Basic Unit type "Jackson" is a three bedroom, three bathroom Unit, containing kitchen, dining and living areas, containing approximately 2,350 square feet. The "Jackson" type Units on levels three through six have a balconette of approximately 36 square feet serving the Unit as a Limited Common Element. There is one type "Jackson" Unit identified as Unit "B" on each level two through six, inclusive, for a total of five type Jackson Units.

(iii) Basic Unit type "Franklin" is a three bedroom, three and one-half bathroom Unit, containing kitchen, dining and living areas, containing approximately 2,188 square feet. The "Franklin" Units on levels three through six have a balcony of approximately 43 square feet serving the Unit as a Limited Common Element. There is one type "Franklin" Unit identified as Unit "A" on each level two through six, inclusive, for a total of five type Franklin Units.

(iv) Basic Unit type "Washington" is a two bedroom, two and one-half bathroom Unit, containing kitchen, dining and living areas, containing approximately 1,162 square feet and a balconette of approximately 8 square feet serving the Unit as a Limited Common Element. There is one type "Washington" Unit identified as Unit "D" on each level two through six, inclusive, for a total of five type Washington Units.

(v) The penthouse Unit is a three bedroom, four and one-half bathroom Unit, containing kitchen, dining and living areas, a study, and a den, containing approximately 2,884 square feet, a balcony of approximately 43 square feet, a balconette of approximately 8 square feet and a roof top terrace area containing approximately 2,884 square feet serving the Unit as Limited Common Elements. There is one penthouse Unit identified as Unit "7", which is located on level seven.

(vi) There is a total of 21 Residential Units.

3.11 Private Parking Spaces. Subject to the right of Declarant to exercise certain Development Rights and Special Declarant Rights described in this Declaration and the Act to add additional Common Elements and Limited Common Elements to 301 East, a Condominium, located on the ground level underneath and behind the Building are 21 covered and 9 uncovered Private Parking Spaces, which have been designated on the Plans as Limited Common Elements. The covered Private Parking Spaces are identified as Parking Space # P1, P2, 6A, 6B, 6C, 6D,

5A, 5B, 5C, 5D, 4A, 4B, 4C, 4D, 3A, 3B, 3C, 2A, 2B, 2C and 6B2. The uncovered Private Parking Spaces are identified as Parking Space # 6A2, 5A2, 5B2, 4A2, 4B2, 3A2, 3B2, 2A2 and 2B2. There are a total of 30 Private Parking Spaces which are designated as Limited Common Elements. In accordance with Section 35-8A-208 of the Act, each Private Parking Space shall be allocated as a Limited Common Element to the to the Unit designated on Exhibit "G" attached hereto. Each Unit so designated shall be entitled to an exclusive easement for the use and enjoyment of said Private Parking Space allocated to that Unit, but such easement and right shall not entitle an Owner to construct anything thereon nor to change any structural part thereof.

3.12 Units in the Commercial Section. Subject to the right of Declarant to exercise certain Development Rights and Special Declarant Rights described in this Declaration and the Act to add additional Units, Common Elements and Limited Common Elements to 301 East, A Condominium, the initial development of 301 East, A Condominium shall contain one Commercial Unit containing 4,964 square feet on the first or ground level of the Condominium. All Units in the Commercial Section of the initial development of 301 East, A Condominium are shown on the Plans. There is a total of one Commercial Unit.

3.13 Storage Locker. There is one storage locker located in the covered parking area of the Building, which storage locker is a Limited Common Element appurtenant to the penthouse Unit 7. The storage locker must be used for single-family residential purposes in connection with the penthouse Unit 7 and may not be separately leased from said Unit nor used for commercial purposes. The maintenance, repair, upkeep and replacement of the storage locker appurtenant to the penthouse Unit 7 and the doorsteps or stoops, if any, providing access thereto shall be the exclusive responsibility of the Owner of the penthouse Unit 7.

3.14 Changes in the Commercial Section. Except to the extent inconsistent with Section 12.3 of this Declaration or the Bylaws or prohibited by law, each Commercial Unit Owner shall have the right, subject to the approval of the Commercial Committee, which shall not be unreasonably withheld, but without the vote or consent of the Residential Committee or the Board or the other Unit Owners to: (1) decorate or make alterations, additions or improvements, whether structural or non-structural, interior or exterior, ordinary or extraordinary, in, to and upon the Commercial Limited Common Elements that are appurtenant to such Commercial Unit; (2) change the layout or number of rooms in the Commercial Unit from time to time; (3) change the Commercial Unit, by subdividing the same, into any desired number of commercial condominium units, combining any of the Commercial Units or combining any units resulting from a subdivision, altering the boundary walls between the Commercial Units, or otherwise; (4) designate a Commercial Limited Common Element as part of a newly created commercial condominium unit or designate all or part of a Commercial Unit as a newly created Residential Unit, Residential Common Element, Commercial Common Element or Commercial Limited Common Element; (5) reapportion among the newly created Commercial Units and/or Residential Units resulting from any subdivision, combination or otherwise their Ownership Percentage which shall be based upon floor space, subject to the location of such space and the additional factors of relative value to other space in the Condominium, the uniqueness of the Unit, the availability of Common Elements for exclusive or shared use and the overall dimensions of the particular Unit; provided that in no case may such reapportionment result in a greater Ownership Percentage for the total of the new Commercial Units and/or Residential Units than existed for the original Commercial Unit; and (6) change,

alter or modify the facade and exterior portion of the Commercial Unit up to the height of the ceiling of the first floor of the Condominium; provided that the Ownership Percentage of any Commercial Unit owned by another Commercial Unit Owner or of any Residential Unit shall not be changed by reason thereof unless the owner of such other Unit shall consent thereto, and the Commercial Unit Owner shall comply with all laws, ordinances and regulations of all governmental authorities having jurisdiction and shall agree to hold the Commercial Committee, the Residential Committee and the Board and all other Unit Owners harmless from any liability arising therefrom.

ARTICLE 4 **ORGANIZATION AND MANAGEMENT**

4.1 **Management of the Condominium Property.** Operation and administration of the Condominium Property shall be performed by the Association. The powers and duties of the Association shall include those set forth in the Act, the Alabama Nonprofit Corporations Act, Ala. Code §10-3A-1 *et seq.* (1975), this Declaration, the Articles of Incorporation, and the Bylaws. In addition, the Association shall have the power and authority specifically:

(a) To purchase one or more Units of the Condominium Property and otherwise acquire, hold, lease, mortgage and convey the same;

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

(c) To enter into leases, or grant easements or licenses for the use of the Common Elements or Limited Common Elements in any manner not inconsistent with the rights of Owners; and

(d) To enter into agreements by which its powers and responsibilities or some of them may be exercised or performed by some other person or persons.

4.2 **Name.** The name of the Association shall be 301 East Condominium Association, Inc.

4.3 **Members.** The members of the Association shall consist of all record Owners of the Units. Change of membership in the Association shall be established by recording in the public records of Madison County, Alabama, the deed or other instrument establishing record title to a Unit and the delivery to the Association of a certified copy of such instrument; the Owner designated by such instrument thereby becoming a record Owner and a member of the Association. Membership of the prior Owner shall thereby be terminated. All present and future Owners, tenants and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the Bylaws and the Rules and Regulations, as the same may be amended from time to time. The votes for a Unit shall be cast by the record Owner thereof or the duly authorized proxy of the record Owner in the manner provided in the Bylaws.

4.4 **Voting Rights.** Each Unit shall be entitled to one vote, which vote is not divisible, the numerical value of which shall be the Ownership Percentage assigned to the Unit of which the member is the Owner. The vote for a Unit shall be cast by the Owner of said Unit in

the manner provided for in this Declaration and in the Bylaws; provided that in the event that the Association becomes an Owner, the Association shall not have the voting right for that Unit. In the event that there are multiple Owners of a Unit, the vote attributable to such Unit shall not be divided, but such Owners shall decide among themselves how such vote shall be cast.

4.5 Restraint upon Assignment of Shares in Assets. The share of an Owner in the funds or other assets of the Association cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the Unit of said Owner.

4.6 Board of Directors. The Association shall be governed by the Board of Directors, which shall consist of such number not less than three nor more than the number, from time to time, as shall be determined and fixed by a vote of the majority of the voting rights present at any meeting of the Owners.

4.7 Bylaws. The Association and its members shall be governed by the Bylaws. The Bylaws of the Association shall be in the form attached as Exhibit "C" to this Declaration, and may be amended from time to time as set forth therein.

4.8 Commercial Committee and Residential Committee. The Board of Directors shall appoint committees from time to time to research and evaluate specific problems, needs or functions and make recommendations to the Board of Directors. Such committees shall make recommendations only since decision making and policy formulation are the sole responsibility of the Board of Directors. In any event, the Board of Directors shall appoint a committee made up of three or more Residential Unit Owners (the "**Residential Committee**") in accordance with the Bylaws to make determinations and perform certain functions, to the extent permitted by law, on behalf of the Board with respect to the Residential Section that do not materially adversely affect the Commercial Section, including the preparation and recommendation of annual budget or budget entries for the Residential Limited Common Elements and any other matters requested from time to time by the Board. The Board of Directors shall also appoint a committee made up of one or more Commercial Unit Owners (the "**Commercial Committee**") in accordance with the Bylaws to make determinations and perform certain functions, to the extent permitted by law, on behalf of the Board with respect to the Commercial Section that do not materially adversely affect the Residential Section, including the preparation and recommendation of annual budgets or budget entries for the Commercial Limited Common Elements and any other matters requested from time to time by the Board.

ARTICLE 5

OWNERSHIP OF COMMON ELEMENTS AND COMMON SURPLUS **AND SHARE OF COMMON EXPENSES; VOTING RIGHTS**

5.1 Ownership of the Common Elements. The Ownership Percentage of each Unit in and to the Common Elements and the Common Surplus, if any, and the formula for determining the same is set forth on Exhibit "C" attached hereto. The Ownership Percentage of each Unit shall be an undivided interest, and except as provided in the Act and this Declaration shall remain undivided. No Owner shall bring any action for partition or division of the Common Elements and the Common Surplus. Except as is provided in any Supplemental Declaration, the Ownership Percentage of any Unit in the Common Elements and the Common

Surplus shall not be conveyed, transferred, encumbered or otherwise affected separate from the ownership of the Unit, and any agreement to the contrary shall be void. Each Owner, and the holder of a Mortgage or lien on, or other interest in, any Unit, shall be deemed by the acceptance of a conveyance of, title to, or Mortgage or lien on such Unit, to have agreed and consented, within the meaning of this Declaration and the Act to such change or changes in the Ownership Percentage in the Common Elements and the Common Surplus and the share of each Unit of the Common Expenses as may result from the addition, if any, of Units, Common Elements or Limited Common Elements, which may be added to 301 East by the exercise of the Development Rights and Special Declarant Rights provided for in this Declaration and in the Act, and to have so agreed and consented to any Supplemental Declaration, amendment or amendments to this Declaration effectuating the same. The Ownership Percentage of each Unit in and to the Common Elements and the Common Surplus, if any, and the formula for determining the same is set forth on Exhibit "C" attached hereto. The Ownership Percentage of each Unit shall be an undivided interest, and except as provided in the Act and this Declaration shall remain undivided. No Owner shall bring any action for partition or division of the Common Elements and the Common Surplus. Except as is provided in any Supplemental Declaration, the Ownership Percentage of any Unit in the Common Elements and the Common Surplus shall not be conveyed, transferred, encumbered or otherwise affected separate from the ownership of the Unit, and any agreement to the contrary shall be void. Each Owner, and the holder of a Mortgage or lien on, or other interest in, any Unit, shall be deemed by the acceptance of a conveyance of, title to, or Mortgage or lien on such Unit, to have agreed and consented, within the meaning of this Declaration and the Act to such change or changes in the Ownership Percentage in the Common Elements and the Common Surplus and the share of each Unit of the Common Expenses as may result from the addition, if any, of Units, Common Elements or Limited Common Elements, which may be added to 301 East by the exercise of the Development Rights and Special Declarant Rights provided for in this Declaration and in the Act, and to have so agreed and consented to any Supplemental Declaration, amendment or amendments to this Declaration effectuating the same.

5.2 Membership in the Association and Voting Rights. Each Unit Owner shall be a member of the Association. Each Unit shall be entitled to one, equally weighted vote to be cast by its Owner or Owners in accordance with the provisions of the Bylaws and the Articles of Incorporation. The total number of votes shall always be equal to the total number of Units submitted to condominium ownership pursuant to this Declaration. Membership in the Association shall automatically terminate upon the termination of ownership of a Unit, and the subsequent Owner(s) taking title shall automatically become entitled to membership.

5.3 Use of Common Elements. Each Owner shall have the right to use the Common Elements (except any portion of the Common Elements designated as a Limited Common Element and restricted to the exclusive use of and as an appurtenance to a Unit in conjunction with the Owners of other Units as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of 301 East. The right to use the Common Elements shall be subject to and governed by the provisions of the Act, Condominium Documents and the Rules and Regulations. In addition, the Association shall have the authority to lease, grant concessions, or grant easements with respect to parts of the Common Elements subject to the provisions of this Declaration and the Bylaws.

5.4 Liability, Lien and Enforcement. The Association is given the authority to administer the operation and the management of the Condominium Property, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Units. To provide the funds necessary for such proper operation, the Association is hereby granted the right to make, levy, and collect assessments against the Owners of all Units to pay Common Expenses, Limited Common Expenses and such other expenses that the Association is authorized to incur under the terms and conditions of this Declaration. In furtherance of said grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation and management of the Condominium Property, the provisions of this Article 5 of this Declaration shall be effective and binding upon the Owners of all Units.

5.5 General Assessments. The Board of Directors shall from time to time, and at least annually, prepare and adopt an annual budget for the Condominium ("Budget for **Common Expenses**"), determine the amount payable by the Unit Owners to meet the Common Expenses of the Condominium, and allocate a General Assessment for all of the Units based upon such Budget for Common Expenses. Except as provided below or elsewhere in the Act or Condominium Documents, the General Assessment for each year shall be assessed against all the Units in accordance with the Ownership Percentage appurtenant to each Unit as set forth in Exhibit "C" attached hereto. The Board of Directors shall advise all Unit Owners promptly in writing of the amount of the General Assessment payable by each of them as determined by the Board of Directors as aforesaid. The Budget for Common Expenses shall include the reserves determined appropriate by the Board, the costs of carrying out the powers and duties of the Association and any other expenses designated as Common Expenses by the Act, this Declaration, the Articles of Incorporation, the Bylaws, or applicable rules and regulations of the Association. Incidental income to the Association, if any, may be used to pay regular or extraordinary Association expenses and liabilities, to fund reserve accounts, or otherwise as the Board shall determine from time to time, and need not be restricted or accumulated. Any Budget for Common Expenses shall be subject to change by the Board of Directors, and the amount of the General Assessment shall be changed in accordance with such revised Budget for Common Expenses to cover actual Common Expenses at any time. The initial Budget for Common Expenses is attached hereto as Exhibit "G".

5.6 Special Assessments. Special Assessments may be levied by the Board of Directors against all the Units and shall be payable in lump sums or installments, in the discretion of the Board; provided that if such Special Assessments, in the aggregate in any fiscal year, exceed 115% of the total General Assessments and Special Assessments for the proceeding fiscal year, the Board must obtain approval of the majority of the Owners of Units represented at a meeting duly called, noticed and held in accordance with the Bylaws and the Act.

5.7 Section Assessments. The Board of Directors may levy Section Assessments against the Commercial Section to meet the Limited Common Expenses for the Commercial Limited Common Elements or against the Residential Section to meet the Limited Common Expenses for the Residential Limited Common Elements. Section Assessments shall be payable in lump sums or installments, in the discretion of the Board.

5.8 Individual Unit Assessments. The Board may levy at any time an Individual Unit Assessment against a particular Unit for the purpose of defraying, in whole or in part, the

cost of any special services to that Unit, for expenses approved by that Unit Owner, or any other charges designated in this Declaration as an Individual Unit Assessment.

5.9 Omission of Assessment. The omission by the Association, before the expiration of any year, to fix the assessments for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

5.10 Detailed Records. The Association shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Elements, Limited Common Elements and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by any Owner at convenient hours on weekdays.

5.11 Default in Payment of Assessments.

(a) The payment of any assessment or installment thereof due the Association shall be in default if such assessment or any installment thereof is not paid to the Association on or before the due date for such payment. When in default, the delinquent assessment or delinquent installment due the Association shall bear interest at the rate established by the Board of Directors not to exceed the maximum interest rate per annum allowed by law, until such delinquent assessment or installment, any late penalty and all interest due thereon has been paid in full. The Association shall have a lien against any Unit for delinquent assessments. Said lien shall secure and does secure the monies due for all assessments then or thereafter levied against the Owner of each Unit, and such lien shall also secure interest, if any, which may be due on the amount of any delinquent assessment owing the Association. Said lien shall also secure all costs and expenses, including late penalties and reasonable attorneys' fees and court costs incurred by the Association in collecting delinquent assessments and enforcing such lien upon such Unit and its appurtenant undivided interest in the Common Elements or Limited Common Elements. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages in the State of Alabama. The lien granted to the Association shall further secure such advances for taxes and payment on account of superior mortgages, liens, or encumbrances which may be required to be advanced by the Association in order to protect and preserve its lien, and the Association shall further be entitled to interest at the maximum legal rate on judgments or the rate established by the Board of Directors, whichever is greater, on any such advance made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit or who may be given or acquire a mortgage, lien, or other encumbrance thereon are hereby placed on notice of the lien rights granted to the Association and shall acquire such interest in any Unit expressly subject to the lien.

(b) The lien herein granted to the Association shall be, effective from and after the time of recording this Declaration in the Probate Office, a claim of lien stating a description of the Unit encumbered thereby, the name of the record Owner, the amount due, the date when due, and the lien shall continue in effect until all sums secured by such lien, as herein provided, shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus late penalties and penalties imposed by the

Association for Rules and Regulations violations, interest, costs, reasonable attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claim of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record at the Unit Owner's cost. The claim of lien filed by the Association shall be subordinate to the lien of any Mortgage or any other lien recorded prior to the time of recording of the Association's claim of lien. The Association's claim of lien for collection of such portion of any tax or special assessment shall specifically designate that the same secures an assessment levied pursuant to the provisions of Article 5 of this Declaration.

(c) Whenever the Eligible Mortgagee of a Mortgage of record, or other purchaser of a Unit, obtains title to the Unit as a result of foreclosure, such acquirer of title and his successors or assigns shall not be liable for the share of assessments by the Association pertaining to the Unit or chargeable to the former Owner of the Unit which became due prior to the acquisition of title as a result of the foreclosure. Such unpaid share of the assessments shall be deemed Common Expenses or Limited Common Expenses, as the case may be, collectible from all the Unit Owners in the proportionate share of their ownership of the Common Elements or the Limited Common Elements, respectively, including such acquirer and his successors and assigns.

5.12 Election of Remedies. Institution of a suit at law to collect payment of any delinquent assessments shall not be deemed to be an election by the Association which shall prevent its thereafter seeking enforcement of the collection by foreclosure of any sums remaining owing to it nor shall proceeding by foreclosure to effect such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association. The Association shall be entitled to bid at any sale held in connection with the foreclosure of the assessment lien and may apply as a cash credit against its bid all sums secured by the lien enforced.

ARTICLE 6

MAINTENANCE AND OPERATION OF THE CONDOMINIUM PROPERTY

6.1 The Association's Obligation to Maintain and Repair. The Association acting through the Board of Directors shall be responsible for the maintenance, repair and replacement of the following, the costs of which shall be charged to all Unit Owners as Common Expenses:

(i) The Common Elements which by definition excludes the surfaces of all interior walls, floors, ceilings, entrance doors, and windows of a Unit (except the painting of the exterior faces of the exterior doors, windows, shutters or blinds, if any, , which shall be the responsibility of the Association);

(ii) Incidental damage caused to a Unit by any work done by the Association;

(iii) Portions of the Units contributing to the support of the Building, including outside walls and load bearing columns, excluding, however, interior wall and floor surfaces.

The Association acting through the Board of Directors shall be responsible for the maintenance, repair and replacement of the Limited Common Elements, the cost of which shall be charged to

all Unit Owners to which said Limited Common Elements being maintained, repaired or replaced attach as a Limited Common Expense.

This Section 6.1 shall not relieve a Unit Owner of liability for damage to the Common Elements or Limited Common Elements caused by the Unit Owner, his family members, guests, invitees, lessees or licensees as a consequence of the negligence or willful misconduct of such person. The cost of repair for any damage so caused by a Unit Owner, his family members, guests, invitees, lessees or licensees, shall be a special assessment against the Unit Owner responsible therefor.

6.2 Each Owner's Obligation to Maintain and Repair.

(a) Except for those portions of the Condominium Property which the Association is required to maintain and repair, each Owner shall, at such Owner's expense, maintain his Unit and the Limited Common Elements attributable to his Unit in good tenantable condition and repair, and shall be responsible for the repair, maintenance and replacement, if necessary, of the following items in or appurtenant to his Unit:

(i) The fixtures and equipment in his Unit, including the refrigerator, stove and all other appliances within the Unit; drains, sinks, plumbing and plumbing fixtures and connections within the Unit; electrical panels, wiring, outlets and electrical fixtures within the Unit; interior doors, windows, window frames, screening and glass; all exterior doors, except the painting of the exterior faces of the exterior doors and windows which shall be the responsibility of the Association; all wall coverings including paint, wallpaper and light fixtures; and all flooring including carpeting, vinyl and ceramic tile within a Unit;

(ii) The plumbing, heating, air conditioning and electrical systems serving only that Unit, whether located within or without the boundary of that Unit, including the fuse boxes, wiring, flues, and all other plumbing, electrical, gas or mechanical systems. In the event any such system or a portion thereof is within another Unit or requires access to another Unit, the repair, maintenance or replacement thereof shall be performed by the Association, and the cost thereof shall constitute an assessment against the Unit Owner responsible therefor; and

(iii) any patio, balcony, terrace or porch that are located adjacent to and connected with a Unit for the exclusive use of the Unit.

(b) Each Unit Owner agrees as follows:

(i) To perform all maintenance, repairs and replacements which are his obligations under subparagraph (a) to this Section 6.2;

(ii) To pay all utilities as herein provided and all taxes levied against his Unit;

(iii) Not to make, or cause to be made, repairs to any plumbing, heating, ventilation or air conditioning systems located outside his Unit but required to be maintained by him under subparagraph 6.2(a)(ii) except by licensed plumbers or electricians authorized to do such work by the Association or its delegate;

(iv) Not to make any addition or alteration to his Unit or to the Common Elements or Limited Common Elements or to do any act that would impair the structural soundness, safety or overall design scheme of any part of the Condominium Property or that would impair any easement or right of the Declarant or a Unit Owner without the prior written consent of the Association, the Declarant and all Unit Owners affected thereby;

(v) Not to make any alteration, addition, improvement, decoration, repair, replacement or change to the Common Elements, Limited Common Elements, or to any outside or exterior portion of the Unit, excluding any alteration or addition made pursuant to the procedure described in subparagraph (iv) above, including altering in any way exterior doors, windows, window frames or the exterior faces of exterior doors or windows, affixing outside shutters (if any) to windows or painting any part of the exterior part of his Unit, without the prior written consent of the Association; provided that if such consent is granted, the Unit Owner shall use only a contractor approved by the Association, who shall comply with all Rules and Regulations with respect to the work which may be adopted by the Association and the Unit Owner shall be liable for all damages to another Unit and to the Common Elements or Limited Common Elements caused by any contractor employed by such Unit Owner or by the subcontractors or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise; and

(vi) To promptly report to the Association any defects or needed repairs for which the Association is responsible.

(c) The Association shall be obligated to answer any request by a Unit Owner for any required approval of a proposed addition, alteration or improvement (by painting or otherwise) within 45 days after such request, but its failure to do so within the stipulated time shall not constitute a consent of the Association to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any Unit shall be executed by the Association, without, however, its incurring any liability on the part of the Board of Directors or any of them or the Association to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim of injury to a person or damage to property arising therefrom. The review by the Association under this Section 6.2 shall in no way make the Association liable for any alterations, additions, or improvements by any Unit Owner. Rather such review is for purposes of aesthetics and control only. The provisions of this Section shall not apply to Units owned by the Declarant until a deed for such Unit has been delivered to the purchaser thereof.

6.3 Alterations, Additions and Improvements by the Association. Except in the case of loss or damage to the Common Elements or Limited Common Elements as contemplated by Article 9 of this Declaration, the Association shall not make any material structural alterations, capital additions or capital improvements to the Common Elements or Limited Common Elements (other than for the purpose of replacing, restoring or rehabilitating portions of the Common Elements or Limited Common Elements which is in accordance with this Declaration and which does not require an expenditure of more than \$5,000, exclusive of any funds applied from the reserves maintained hereunder) unless the same is authorized by the Board of Directors and ratified by the affirmative vote of the voting members casting not less

than 75% of the total votes of the members of the Association present at any regular or special meeting of the Unit Owners called for that purpose at which a quorum is present and approved by a majority of the Eligible Mortgagees eligible to vote therefor. The cost of the foregoing shall be assessed against the Owners of Units as provided in Article 5 hereof except as otherwise provided in this Section 6.3. Where any alterations or additions as aforesaid are exclusively or substantially exclusively for the benefit of the Unit Owners requesting the same, then the cost of such alterations or additions shall be assessed against and collected solely from the Unit Owners exclusively, or substantially exclusively, benefiting therefrom, and the assessment shall be levied in such proportions as may be determined to be fair and equitable by the Board of Directors. Where such alterations or additions exclusively, or substantially exclusively, benefit Unit Owners requesting the same, said alterations and additions shall be made only when authorized by the Board of Directors and ratified by not less than 75% of the total votes of the Unit Owners exclusively, or substantially exclusively, benefiting therefrom. Alterations, improvements or repairs of an emergency nature may be made upon authorization by a vote of the majority of the Directors available for consultation if the same is necessary and in the best interest of the Unit Owners.

6.4 **Utilities.** Each Unit Owner shall be required to pay all charges for utilities, including electricity, gas, water, sewer, cable television, and telephone service, used or consumed in his Unit. The utilities serving the Common Elements only shall be separately metered and paid by the Association as a Common Expense. The Association shall have authority to pay the cost of any of the utilities used or consumed in the Units not separately metered and have the costs thereof apportioned among the Units based upon use of the utility or any other formula the Association may deem appropriate.

6.5 **Costs of Certain Commercial Limited Common Elements.** Notwithstanding anything to the contrary in this Section 6, if a Commercial Limited Common Element or a Common Element benefits only certain Commercial Unit Owners, then the Commercial Section's costs of alteration, addition, repair, replacement and restoration thereto (except in connection with a casualty or condemnation) shall be borne solely by those Commercial Unit Owners who benefit from the Commercial Common Element in the proportion that the Ownership Percentage of each benefiting Commercial Unit Owner bears to the Ownership Percentage of all benefiting Commercial Unit Owners. In addition, except as otherwise provided in the Bylaws, such Commercial Unit Owners shall be responsible for the normal operation, maintenance and repair, including the cost of staff necessary for such operation, maintenance and repair, of any such Commercial Limited Common Element at their sole cost and expense.

ARTICLE 7
RESTRICTIONS ON USE OF UNITS, COMMON
ELEMENTS, AND LIMITED COMMON ELEMENTS

7.1 **General Rules and Regulations of the Association.** The Association is authorized to promulgate, amend and enforce Rules and Regulations concerning the operation and use of the Condominium; provided that such Rules and Regulations are not contrary to or inconsistent with the Act or the Condominium Documents. A copy of the Rules and Regulations shall be furnished by the Board of Directors to each Unit Owner prior to the time they become effective. All present and future Unit Owners, tenants, and occupants of the Units and any

person who uses any part of the Condominium Property in any manner, are subject to, and shall comply with the provisions of the Condominium Documents and the Rules and Regulations. The acquisition, rental or occupancy of a Unit or the use of any part of the Condominium Property by any one person shall constitute his agreement to be subject to and bound by the provisions of the Condominium Documents and the Rules and Regulations, and such provisions shall be deemed to be enforceable as equitable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated in full in each and every deed of conveyance or lease thereof. The Association may promulgate enforcement provisions for violation of any Rule or Regulation by a Unit Owner, his family members, guests, invitees, lessees or renters, including the payment of penalties for such violations.

7.2 Restrictions on Use. The use of the Condominium Property is subject to the following restrictions:

(a) No Obstruction. There shall be no obstruction of the Common Elements or Limited Common Elements, nor shall anything be kept or stored in the Common Elements or Limited Common Elements (except balconies and terraces appurtenant to any Unit), nor shall anything be constructed on or planted in or removed from the Common Elements or Limited Common Elements, nor shall the Common Elements in any other way be altered without the prior written consent of the Association.

(b) No Unlawful Use. No immoral, improper, offensive or unlawful use shall be made of any Unit or of the Common Elements or the Limited Common Elements, or any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction over the Condominium Property shall be observed.

(c) No Increase to Insurance Premiums. No Owner shall permit anything to be done or kept in his Unit or in the Common Elements or Limited Common Elements which will result in any increase of fire or hazard insurance premiums or the cancellation of insurance on any part of the Condominium Property, or which would be in violation of any law. No waste shall be committed to the Common Elements or Limited Common Elements. Any fireplaces in the Units will be equipped with natural gas burning units and no other substance may be burned in them.

(d) Signs. Except as otherwise set forth in this Declaration, no sign of any kind shall be displayed to the public view on or from any part of the Condominium Property, including "for sale" or "for rent" signs, without the prior written consent of the Board of Directors, except signs temporarily used by the Declarant in the selling or leasing of the Units and signs for a Commercial Unit approved by the Declarant or the Board of Directors.

(e) Window Treatments. All window treatments, including curtains, blinds, shades or anything covering the windows shall be white, off-white or lined in white. Blinds or shutters located on the exterior of a Unit, if any, may not be painted or altered by the Unit Owner.

(f) Unreasonable Annoyance or Nuisance. No noxious or offensive activities shall be carried on, nor shall any outside lighting or sound speakers or other sound producing devices be used, nor shall anything be done, in any part of the Condominium Property, which in the

judgment of the Board of Directors may be or may become an unreasonable annoyance or nuisance to the other Owners.

(g) Exterior of Units. No Owner shall cause or permit anything to be placed on the outside walls of his Unit, and no sign, awning, canopy, window air conditioning unit, shutter, or other fixture shall be affixed to or placed upon the exterior walls or roof of any building or any part thereof, without the prior written consent of the Board of Directors. No clothes, sheets, blankets, towels, laundry of any kind, flags, streamers, balloons, holiday decorations or other articles shall be hung out or exposed on any part of any balcony, terrace, railing or furniture on any part of the Common Elements or the Limited Common Elements. The Common Elements and the Limited Common Elements shall be kept clear of rubbish, debris and other unsightly materials.

(h) Transmission Equipment, Antennas, Dishes and Discs. No ham radios or radio transmission equipment shall be placed on any Common Element or Limited Common Element so as to be visible from any street or any Unit; no television or radio antennas or television satellite dishes over 22 inches shall be permitted. The location of satellite dishes will be directed and approved in writing by the Association on a case-by-case basis.

(i) Animals. No livestock, poultry, reptiles, insects or raptors of any kind shall be raised, bred or kept in any Unit except that not more than two dogs under 22 lbs, or one dog under 66 lbs, and not more than 2 cats, or 2 caged birds may be kept as domestic pets; provided that they are not kept, bred or maintained for any commercial purposes. Owners must obtain written approval from the Association for each pet they wish to keep. No dog houses or cat litter boxes are allowed on any balcony, terrace, loggias or roof. No railing may be modified for any pet. The Association will levy each pet owner an additional assessment to defray any additional Common Expenses, which may be caused by a pet. The Association may modify pet assessments from time to time.

(j) Trash. Each Residential Unit shall be provided with a trash container in the trash room on each floor. Each Owner of a Residential Unit shall place his refuse and trash in his designated container for regularly scheduled removal. Owners shall not have access to the trash chute without the approval of the Association. Trash removal service will be contracted by the Association.

(k) Outdoor Grilles. No outdoor grilles are allowed except those specifically approved in writing by the Association. Pending approval of building code and fire officials of the City of Huntsville, natural gas fired grills under 48,000 BTU's that are hard piped by a licensed plumber and inspected by the appropriate officials for the City of Huntsville will be allowed in designated locations by written notification of the Association.

(l) Business Activities. Business activities that are normally carried out in a home based business are allowed except that any business activities shall not cause routine visits by any type of guest (i.e. clients, vendors, customers, contractors) with a frequency of greater than four per day or 16 per week.

(m) Parking. All parking spaces shall be used exclusively for the parking of passenger automobiles or trucks classed by manufacturer rating as not exceeding three-quarter ton. No boat, trailer, mobile home, detached camper shell, recreational vehicle, or similar vehicle or equipment shall be permitted to be parked or stored at any place on the Condominium Property without the prior approval of the Board of Directors. This covenant for parking shall not be apply to temporary parking of trucks and commercial vehicles used for pick up and delivery. The Association may have any violating vehicle towed at the sole expense of the owner of such vehicle and the parking of vehicles shall otherwise be subject to the Rules and Regulations applicable to parking. The Association shall not be liable to the owner of such vehicle or equipment for trespass, conversion or otherwise, nor guilty of any criminal act by person for such towing and neither its removal nor failure of the owner to receive any notice of said violation shall be grounds for relief of any kind. The Board of Directors may or may not in the sole discretion of the Board of Directors assign specific parking spaces which are not located under the Building to the Commercial Unit Owners. If such an assignment is made, then such assignment shall not be recorded in the public records. The Board of Directors shall have the rights to change the assignment of such specific parking spaces from time to time in the sole discretion of the Board of Directors. An Owner may not lease or otherwise grant a license or use right for any of the parking rights provided for in this Declaration. No Private Parking Spaces are allocated to the Commercial Units and parking for Commercial Units will be off site parking.

(n) Vehicle Maintenance and Repair. No maintenance or repairs shall be performed on any vehicle on any portion of the Condominium Property except in an emergency. Notwithstanding the foregoing, any repairs to disabled vehicles must be completed within twenty-four hours from the time of immobilization or the vehicle must be removed from the Condominium Property.

(o) Balconies, Terraces, Loggias. Each Owner must submit requests to the Association, along with photographs or drawings, of any furniture, planter or container or other semi-permanent item he wishes to place on any balcony, terrace or loggia.

7.3 Restrictions for Commercial Units.

(a) Permitted Uses. Subject to Section 7.3(b) below, the Commercial Units may be used for any lawful uses, including, without limitation, department and other retail stores and outlets, banks, restaurants and commercial and professional offices and studios, subject, however, to (i) the terms and conditions of the then existing certificate of occupancy for such Commercial Unit, and (ii) applicable Laws.

(b) Prohibited Uses. Notwithstanding the foregoing, none of the Commercial Units shall be used in whole or in part for any of the following purposes:

(i) Warehouse or storage (excluding storage incidental to retail store uses within an enclosed building and incidental to the use conducted within such store);

(ii) Living quarters, sleeping apartments or lodging rooms;

(iii) any business which (a) creates strong, unusual and offensive odors, fumes, dust or vapors; (b) is a public or private nuisance; (c) emits noise or sounds which are

objectionable due to intermittence, beat, frequency, shrillness or loudness; or (d) creates unusual fire, explosive or other hazards; or

(iv) as a theater; bowling alley; billiard parlor or pool hall; funeral parlor or mortuary; flea market; discotheque; skating rink; pawn shop; adult bookstore or establishment selling, exhibiting or distributing pornographic or obscene materials; establishment that hosts obscene, nude or semi-nude live performances; so-called "head shop"; video game room, amusement arcade or game room; off-track betting parlor; or manufacturing facility.

(c) Proposed Uses. A Commercial Unit Owner may submit proposed uses for a Commercial Unit that are not specifically permitted pursuant to Section 7.3(a) above or prohibited pursuant to Section 7.3(b) above, for the review and approval or disapproval of the Board of Directors.

7.4 Use Restrictions for Residential Units. Each Residential Unit shall be used for residential purposes only; provided that Owners of Residential Units may conduct "in-home" business activities so long as such business activity does not: (i) violate the terms and conditions of the certificate of occupancy for such Residential Unit or applicable Laws; (ii) increase the volume of guests beyond what would reasonably be experienced in the absence of such business activities; or (iii) otherwise adversely affect the use or enjoyment of neighboring or adjacent Residential Units for residential purposes. Residential Units may only be leased in accordance with the By-Laws and the Rules and Regulations. Notwithstanding the foregoing or anything contained in the By-Laws or Rules and Regulations to the contrary, Declarant may, without the permission of the Board or the Residential Committee, (a) grant permission for the use of any Residential Unit owned by it as a professional office or for any other purpose; provided that such use is permitted by Law, and does not violate the then existing certificate of occupancy for such Residential Unit or any other Laws, and (b) use any unsold Residential Units owned by it as models and sales and/or promotion offices in connection with the sale or rental of the Units, subject only to compliance with applicable Law.

7.5 Right of Access. Each Unit Owner grants a right of access to his Unit to the Association, and to any other person authorized by the Association for the purpose of making inspections and for the purpose of correcting any condition originating in his Unit and threatening other Units, the Common Elements or the Limited Common Elements, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements within his Unit, if any, or to correct any condition which violates the provisions of any Mortgage covering another Unit, or to enforce any provision of the Condominium Documents, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate whether the Unit Owner is present at the time or not. Each Unit Owner further grants a right of access to his Unit to the Declarant or his agent, or other authorized representative who is not Declarant's agent, for the purpose of making all repairs required by any warranty delivered to the Unit Owner at the closing of his Unit. To the extent that damages are inflicted on the Common Elements, Limited Common Elements or any Unit through which access is taken, the Unit Owner or the Association, if it causes the same, shall be liable for the prompt repair thereof.

7.6 Limitation of Liability. The Association shall not be liable for any failure of water or power supply, telephone, security, fire protection or other service to be obtained by the Association or paid for out of the Common Expense funds, for problems resulting from the operation or lack of operation of sewer lines servicing the Condominium Property, or for injury or damage to a person or property caused by the natural elements or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Elements, Limited Common Elements or from any wire, pipe, drain, conduit, appliance or equipment. The Association shall not be liable to the Owner of any Unit for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Elements or the Limited Common Elements. No diminution or abatement of the Common Expense assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements, the Limited Common Elements or to any Unit, or from any action taken by the Association to comply with any law or ordinance or with the order or directive of any municipal or other governmental or judicial authority or for the dispossession of the Unit Owner by reason of fire or other casualty, except to the extent covered by insurance.

7.7 Abatement of Violations. The violation of any Rule or Regulation adopted by the Board of Directors or breach of the provisions of the Condominium Documents, shall give the Declarant, the Association or any Unit Owner the right, in addition to any other right or remedy elsewhere available to it, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. All expenses of such actions or proceedings against a defaulting Unit Owner, including court costs, attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest lawful rate on judgments until paid, shall be charged to and assessed against such defaulting Owner, and the Association shall have a lien for all of the same upon the Unit of such defaulting Owner, upon all of his additions and improvements thereto and a security interest under the Alabama Uniform Commercial Code upon all of his personal property in his Unit or located elsewhere on the Condominium Property. Nothing herein contained shall prevent an Owner from maintaining such an action or proceeding against the Association and the expense of any action to remedy a default of the Association shall be a Common Expense if a court of competent jurisdiction finds the Association to be in default as alleged in such action or proceeding.

7.8 Failure to Insist on Strict Performance; No Waiver. Failure of the Association to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment from the future performance of such term, covenant, condition or restriction but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Association of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed to be a waiver of such breach and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors.

7.9 Use by Declarant. Subject to the rights of the Eligible Mortgagees hereunder, neither the Owners, the Board of Directors nor their use of the Condominium Property or

application of this Declaration shall interfere with the completion of the contemplated improvements and sales of the Units in the Condominium until Declarant has completed all of Declarant's contemplated improvements and closed the sales of all of such Units. Subject to the rights of the Eligible Mortgagees hereunder, the Declarant may make such use of the unsold Units and of the Common Elements as may facilitate such completion and sale, including maintenance of a sales office and grounds, the showing of the Condominium Property and the Units therein, the display of signs thereon and therein. The Declarant expressly reserves the right to lease any Unit which it may own in the Condominium Property on such terms as it may deem proper and desirable and may transfer Units subject to any such lease.

7.10 Signs. Declarant or its designee and the Commercial Unit Owners and their successors and assigns shall, to the extent permitted by law, have an easement to erect, maintain, repair and replace, from time to time, one or more signs on the Property (other than on the exterior walls of the Building surrounding Units not owned by the party erecting the sign) for the purposes of advertising (i) the sale or lease of any Unsold Residential Unit, the sale or lease of all or any portion of the Commercial Unit and (ii) the operation of any business of a tenant or occupant of all or any portion of any Commercial Unit or of any Unsold Residential Units, as the case may be.

7.11 Sound Transmission. Declarant hereby discloses that there may be sound transmission that will naturally occur between floors and the Units. All Units shall have the floors covered with carpet, tile or wood flooring, provided that appropriate underlayment is installed to minimize, as best as reasonably possible, sound transmission between the Units. Any and all such installations shall not be undertaken without the prior written consent of the Association. If the installation is made without such prior written approval, the Board may, in addition to exercising all the other remedies provided in this Declaration, require the offending Unit Owner to cover all such hard-surface flooring with carpeting, or require the removal of such hard-surface flooring at the expense of the offending Unit Owner. Each Unit Owner, by acceptance of a deed or other conveyance of title of their Unit, hereby acknowledges and agrees that sound and impact noise transmission in a building such as within the Condominium is very difficult to control, and that noises from adjoining, adjacent or nearby Units and/or mechanical and plumbing equipment, lines and facilities can be heard in another Unit. The Declarant does not make an representation or warranty as to the level of sound or impact noise transmission between and among Units and the other portion of the Condominium Property, and each Unit Owner hereby waives and expressly releases, to the extent not prohibited by applicable law as of the date of this Declaration, any such warranty and claims for loss or damages resulting from sound or impact noise transmission.

7.12 Leasing of Units.

(a) (a) No Unit Owner may lease or rent a Unit if delinquent in the payment of any Assessments. If all Assessments are paid up to date, a Unit Owner may rent or lease a Unit without further approval; and the rights of any tenants are hereby made subject to the power of the Association to prescribe reasonable rules and regulations relating to the rental or leasing of a Unit and to enforce the same directly against a tenant or other occupant by the exercise of such remedies as the Board of Directors deems appropriate, including eviction. Each Unit Owner who shall lease his Unit irrevocably empowers the Association or its managing agent to enforce the

rules and regulations and to terminate the lease and evict any tenant who fails to comply with the rules and regulations. The Association, the Board of Directors, and any agent thereof, shall not become liable to any Unit Owner or any person who sublets a Unit, or any other party for any loss of rents or other damages resulting from the reasonable exercise of the provisions of this paragraph. The Unit Owner renting or leasing a Unit shall promptly notify the Association and any management firm of each renter and the term of such rental or lease. The sub-leasing or sub-renting of a Unit Owner's interest shall be subject to the same limitations as are applicable to the leasing or renting thereof. The Association shall have the right to require upon notice to all Unit Owners that a substantially uniform form of lease or sub-lease be used by all Unit Owners (including the Declarant) intending to rent or lease after said notice and to provide such form as a Common Expense. Entire Units only may be rented, provided the occupancy is only by the lessee, his family and guests; no individual rooms may be rented. The provisions of this Section shall not be amended without the prior written approval of the Declarant for so long as the Declarant owns any Units of the Condominium. The enforcement of this paragraph shall be subject to any superseding governmental regulations which control or are applicable.

(b) A tenant of a Unit shall have all of the use rights in the Common Elements otherwise readily available for use generally by Unit Owners, and the Owner of the lease Unit shall not have such rights, except as a guest. This shall not, however, interfere with access rights of any Owner as landlord pursuant to applicable law.

ARTICLE 8

RIGHTS OF MORTGAGEES

8.1 **Notification of Eligible Mortgagees Required.** Any Eligible Mortgagee shall have the right to be given written notification by the Association of (i) any 60 day default by the Owner of the Unit covered by the Mortgage in the payment of assessments or in any other provision of the Condominium Documents; (ii) any loss to or taking of the Common Elements or the Limited Common Elements if such loss or taking exceeds \$10,000; (iii) damage to a Unit covered by its Mortgage if the amount of such damage exceeds \$1,000; (iv) any condemnation of all or a portion of the Condominium Property; (v) a lapse or cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (vi) any proposed action that requires the consent of a specified percentage of Eligible Mortgagees.

8.2 **Right of Inspection.** Eligible Mortgagees shall have the right to examine the books and records of the Association or the Condominium Property and to receive annual reports, other financial data, and, upon request, an annual audited statement, within 90 days following the end of any fiscal year of the Association.

8.3 **Required Reserve Funds and Working Capital Fund.** Assessments levied by the Board Of Directors shall include an adequate reserve fund for maintenance, repair and replacement of those Common Elements and Limited Common Elements that must be replaced or repaired on a periodic basis, and may be payable in regular installments rather than by special assessments. A working capital fund shall be established for each Unit Owner purchasing a Unit. Assessments levied by the Board Of Directors shall include an adequate reserve fund for maintenance, repair and replacement of those Common Elements and Limited Common Elements that must be replaced or repaired on a periodic basis, and shall be payable in regular

installments rather than by special assessments. A working capital fund shall be established and each Unit Owner purchasing a Unit from the Declarant shall pay a one-time assessment equal to two months' assessment at the time of closing the purchase by each Unit Owner of a Unit to be used by the Association as a reserve for working capital. The Declarant is prohibited from using the working capital funds to defray any of its expenses, reserve contributions or construction costs or to make up any budget deficits while it is in control of the Association. When unsold Units are sold by the Declarant, the Declarant may reimburse itself for funds it paid the Association for an unsold Unit's share of the working capital fund by using funds collected at closing when such Unit is sold.

8.4 Priority of Eligible Mortgagees.

(a) Any lien which is or may be created hereunder upon any Unit, including the lien created for assessments under Sections 5.7 through 5.8 hereof, and the right to foreclose the same, is and shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any Mortgage upon such interest made in good faith and for value and recorded prior to the creation of the lien hereunder; provided that after the foreclosure of any such Mortgage there may be a lien created pursuant to Sections 5.7 through 5.8 hereof on the interest of the purchaser as an Owner after the date of such foreclosure sale to secure all assessments hereunder. After the date of such foreclosure sale, said lien, if any, shall be claimed and shall have the same effect and be enforced in the same manner provided herein. Notwithstanding the foregoing, the lien created pursuant to this Declaration is prior to any Mortgage to the extent of the assessments for Common Expenses based on the annual budget, which Common Expenses would have become due in the absence of acceleration of the Mortgage during the six-month period before institution of an action to enforce the lien created hereunder.

(b) No provision of this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations shall be construed to grant to any Unit Owner, or to any other party any priority over any rights of the Eligible Mortgagees of the Units pursuant to their Mortgages in the case of distribution to Unit Owners of the insurance proceeds or condemnation awards for losses or a taking of Units or the Common Elements, the Limited Common Elements or any portion thereof.

(c) As provided in the Act, all assessments, property taxes and other charges imposed by any taxing authority which may become liens prior to a Mortgage, shall be separately assessed against and collected on each Unit as a single parcel, and not on the Condominium Property as a whole.

(d) No breach of the covenants, conditions or restrictions herein contained shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or otherwise.

8.5 Request for Protection by Eligible Mortgagees. Whenever any Eligible Mortgagee desires the benefit of the provisions of this Article 8 to be applicable to it, it shall serve written notice of such fact upon the Association, by registered or certified mail, addressed

to the Association, and actually mailed to the Association's address stated herein, identifying the Unit upon which it holds a Mortgage or identifying any Units owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it. Said notice shall designate the place to which the notices are to be given by the Association to such Eligible Mortgagee.

ARTICLE 9

CASUALTY LOSS AND INSURANCE

9.1 Responsibility of Owners; Separate Insurance Coverage.

(a) The Owner of each Unit may, at his expense, obtain insurance coverage for loss of or damage to any furniture, furnishings, personal effects, and other property belonging to such Owner, and may, at his expense, obtain insurance coverage against personal liability for injury to the person or property of another while within such Owner's Unit or upon the Common Elements or the Limited Common Elements. Risk of loss of or damage to any furniture, furnishings and personal property belonging to or carried on the person of the Owner, or which may be stored in any Unit, or in or upon Common Elements or the Limited Common Elements, shall be borne by the Owner of each Unit. All furniture, furnishings and personal property constituting a portion of the Common Elements or the Limited Common Elements and held for the joint use and benefit of all Owners of Units shall be covered by such insurance as shall be maintained in force and effect by the Association as hereinafter provided. Each Owner shall be required to notify the Association of all improvements made by the Owner to his Unit, the value of which is in excess of \$5,000. All insurance obtained by the Owner of each Unit shall, whenever such provisions shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners, the Association or the Declarant, and their respective servants, agents, employees and guests.

(b) Any Owner who obtains an individual insurance policy covering any portion of the Condominium Property other than personal property belonging to such Owner shall be required to file a copy of such individual policy or policies with the Association within 30 days after the purchase of such insurance. In the event casualty insurance maintained by an Owner causes a decrease in the amount of the insurance coverage maintained by the Association for the benefit of all Owners on a casualty loss to the Condominium Property by reason of proration or otherwise, the Owner so maintaining such insurance shall be deemed to have assigned to the Association the proceeds collected on such policy for loss or damage to the Condominium Property and such proceeds shall be paid directly to the Association by the insurer. Any such insurance proceeds shall be applied and distributed by the Association in accordance with this Article 9.

9.2 Insurance to be Maintained by the Association.

(a) Hazard Insurance. The Association shall obtain and maintain at all times a policy or policies of multi-peril type hazard insurance, including insurance for such other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design, location and use, insuring the Condominium Property against loss or damage by the perils of fire, lightning and those perils

contained in extended coverage, vandalism and malicious mischief endorsements and, if the Condominium Property is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards, the Board shall, to the extent obtainable, insure the insurable property included in the Condominium Property against the perils of flood under the National Flood Insurance Act of 1968 and acts amendatory thereto. The amount of insurance coverage shall be determined on a replacement cost basis in an amount not less than 100% of the then current replacement cost of the improvements, including fixtures, equipment and other personal property inside the Units in the Condominium Property (but excluding land, foundations, excavations and other items usually excluded from such insurance coverage). Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association or the Insurance Trustee (hereinafter defined), as trustee for the use and benefit of the individual Owners (without naming them) in the proportionate shares equal to their respective percentage ownership of the Common Elements and the Limited Common Elements. Prior to the renewal of any such policy or policies of insurance, the Association shall obtain an appraisal from a qualified appraiser for the purpose of determining the full replacement cost of the Common Elements, the Limited Common Elements and the Units for the amount of insurance to be effected pursuant hereto. The cost of any and all such appraisals shall be a Common Expense. All such policies of insurance shall comply with the provisions of Section 9.3 hereof and shall (i) contain standard mortgagee clause endorsements in favor of the Eligible Mortgagee or Eligible Mortgagees of each Unit, if any, as their respective interests may appear; and (ii) provide that the insurance shall not be invalidated by any act or neglect of any Owner.

(b) Public Liability and Condominium Property Damage Insurance. The Association shall obtain and maintain at all times a comprehensive policy or policies of public liability and property damage insurance in such amount (but not less than \$1,000,000) and in such form as shall be required by the Association to protect said Association and the Owners of all Units, which provide coverage for bodily injury and property damage resulting from the operation, maintenance or use of the Common Elements and Limited Common Elements and for legal liability resulting from employment contracts to which the Association is a party and for claims against the officers and members of the Board of Directors for claims arising out of the negligent performance of their duties.

(c) Workmen's Compensation Insurance. The Association shall obtain and maintain at all times a policy or policies of workmen's compensation insurance to meet the requirements of the laws of the State of Alabama.

(d) Fidelity Bonds. The Association shall obtain and maintain fidelity bonds for any person who either handles or is responsible for funds held or administered by the Association naming the Association as the obligee. The amount of the fidelity bond should cover the maximum funds that will be in the custody of the Association, but not less than the sum of six months' assessments on all Units plus the reserve funds of the Association.

(e) Other Insurance. The Association shall obtain and maintain such other insurance coverage as the Board of Directors, in its sole discretion, may determine from time to time to be in the best interest of the Association and the Owners of all Units.

9.3 **Governing Provisions.** All insurance obtained and maintained by the Association as provided in Section 9.2 above shall be governed by the following provisions:

(a) All policies shall (i) comply with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association as they shall apply to condominium loans; and (ii) be written with a company licensed to do business in the State of Alabama and holding a financial rating of Class V or better and a general policyholders rating of "A" or better by Best's Insurance Reports or other then comparable rating. To the extent that the provisions of this Declaration with respect to the maintenance of insurance shall conflict with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, then the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association shall control and such requirements shall be complied with by the Association.

(b) Exclusive authority to adjust all claims under the policies hereafter in force on the Condominium Property shall be vested in the Association or its authorized representatives.

(c) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with the insurance purchased by the individual Owners or their Eligible Mortgagees.

(d) The Association shall be required to make every effort to secure insurance policies that will provide for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Association, the Board of Directors, the Declarant or the Owners;

(ii) An agreement by the insurer that the insurance coverage cannot be terminated or materially changed without ten days' prior written notice to the Association and the Eligible Mortgagee of each Unit;

(iii) The insurance coverage will be primary, even if a Unit Owner has other insurance that covers the same loss; and

(iv) No act or omission by any Unit Owner, unless acting within the scope of Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

9.4 **Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense; except that the amount of increase over the usual premium occasioned by the use, misuse, occupancy or abandonment of a Unit or its appurtenances or of the Common Elements by an Owner shall be assessed against that Owner.

9.5 **Insurance Trustee.** The Association may engage the services of a bank or trust company authorized to do trust business in the State of Alabama and having a capital and surplus of not less than \$50,000,000 to act on its behalf as an insurance trustee ("**Insurance Trustee**") and to receive and disburse the insurance proceeds in accordance with the provisions of this

Declaration. In the event the lowest of two bids from reputable contractors for making all repairs required by any such loss shall exceed \$50,000, the Association upon written demand of the Eligible Mortgagee of any Unit shall engage the services of a bank or trust company to act as Insurance Trustee as aforesaid. The Association, as a Common Expense, shall pay a reasonable fee to said Insurance Trustee for its services rendered hereunder, and shall pay such costs and expenses as said Insurance Trustee may incur in the performance of any duties and obligations imposed upon it hereunder. Said Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then for only such money which comes into the possession of said Insurance Trustee. Whenever the Insurance Trustee may be required to make distribution of insurance proceeds to Owners of Units and their Eligible Mortgagees, as their respective interests may appear, or to any other party for repair, replacement or reconstruction of property, the Insurance Trustee may rely upon a certificate of the President and Secretary of the Association, executed under oath, which certificate will be provided to said Insurance Trustee upon request made to the Association. Such certificate is to certify unto said Insurance Trustee the name of the Owner of each Unit, the name of the Eligible Mortgagee who may hold a Mortgage encumbering each Unit, and the respective percentages of any distribution which may be required to be made to the Owner of any Unit, and his respective Eligible Mortgagee, as their respective interests may appear, or to certify the name of the party to whom payments are to be made for repair, replacement or reconstruction of all or a portion of the Condominium Property. The rights of the Eligible Mortgagee of any Unit under any standard mortgagee clause endorsement to such policy shall, notwithstanding anything to the contrary therein or in any Mortgage contained, at all times be subject to the provisions hereof with respect to the application of insurance proceeds to reconstruction of the damaged Condominium Property; provided that if the Association or the Insurance Trustee fails to perform all the conditions precedent required by the policy or policies of insurance, and fails to collect the amount of the loss within the time required by law, and the Eligible Mortgagee or Eligible Mortgagees are required to avail themselves of their rights under the standard mortgagee clause to collect the proceeds of the policy or policies of insurance, any amount so collected through the efforts of said Eligible Mortgagee or Eligible Mortgagees shall be applied as directed by said Eligible Mortgagee or Eligible Mortgagees. No provision hereof shall entitle an Owner or any other party to any priority over an Eligible Mortgagee with respect to the distribution of any insurance proceeds with respect to such Unit.

9.6 Loss to Common Elements Only. In the event of the loss of or damage to only Common Elements, real or personal, by reason of fire or other casualties, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association or the Insurance Trustee, as the case may be, to cover such loss or damage shall be applied to the repair, replacement or reconstruction of such loss or damage. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of such Common Elements, then such excess insurance proceeds shall be paid by the Insurance Trustee to the Owners of all Units, the distribution to be separately made to the Owner of each Unit and his respective Eligible Mortgagee, as their interests may appear, in such proportion that the share of such excess insurance proceeds paid to the Owner of each Unit and his Eligible Mortgagee shall bear the same ratio to the total excess insurance proceeds as the undivided interest in the Common Elements appurtenant to each Unit bears to the total undivided interest in the Common Elements appurtenant to all Units. If there is no insurance coverage for such loss or damage or, if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the

Association or the Insurance Trustee are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be so sufficient, then the Association shall pay, or shall deposit with the Insurance Trustee, as the case may be, a sum, which together with the insurance proceeds received or to be received, if any, will enable said Insurance Trustee to completely pay for the repair, replacement or reconstruction of any loss or damage, as the case may be. The monies to be so paid, or deposited by the Association with the Insurance Trustee, may be paid by the Association out of its reserve or replacement fund and if the amount in such reserve or replacement fund is not sufficient or, if the Board of Directors determines not to use such fund for said purpose, then the Association shall levy and collect an assessment against the Owners of all Units in an amount which shall provide the funds required to pay for said repair, replacement or reconstruction.

9.7 Loss to Common Elements and Units. In the event of loss of or damage to Common Elements and any Unit by reason of fire or other casualty, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association or Insurance Trustee, as the case may be, to cover such loss or damage, shall be first applied to the repair, replacement or reconstruction of the Common Elements other than Limited Common Elements, then to the repair, replacement or reconstruction of any Limited Common Elements and any remaining insurance proceeds shall be applied to the repair, replacement or reconstruction of the Units which may have sustained any loss or damage so covered. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of the Common Elements and the Units sustaining any loss or damage, then such excess insurance proceeds shall be paid and distributed by the Insurance Trustee to the Owners of all Units, and to their Eligible Mortgagees, as their respective interests may appear. Such distributions are to be made in the manner and in the proportions as are provided for the distribution of insurance proceeds under Section 9.6 above. If there is no insurance coverage for such loss or damage or, if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association or the Insurance Trustee, as the case may be, are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be sufficient, then the Board of Directors shall, based on reliable and detailed estimates obtained by it from competent and qualified parties, determine and allocate the cost of repair, replacement or reconstruction between the Common Elements and the Units sustaining any loss or damage. If the proceeds of said fire and casualty insurance, if any, are sufficient to pay for the repair, replacement or reconstruction of any loss of or damage to the Common Elements other than Limited Common Elements, but are not sufficient to repair, replace or reconstruct any loss of or damage to the Limited Common Elements or the Units sustaining damage, then the Association shall levy and collect an assessment from the respective Owners of the Limited Common Elements and the Units sustaining any loss or damage, and the assessment so collected from said Owner shall be deposited with the Insurance Trustee, if any, so that the sum on deposit with said Insurance Trustee shall be sufficient to completely pay for the repair, replacement or reconstruction of all Common Elements and the Units. In said latter event, the assessment to be levied and collected from the Owners of the Limited Common Elements shall be in proportion to this undivided interest in the Limited Common Elements and the assessment to be levied and collected from the Owner of each Unit sustaining loss or damage shall be apportioned between such Owners in such manner that the assessment levied against each Owner and his Unit shall bear the same proportion to the total assessment levied against all of Unit Owners sustaining loss or damage as the cost of repair, replacement or reconstruction of each Owner's Unit bears to the

cost applicable to all of said Units sustaining loss or damage. If the fire and casualty insurance proceeds, if any, payable to the Association or the Insurance Trustee in the event of the loss of or damage to Common Elements and the Units are not an amount which will pay for the complete repair, replacement or reconstruction of the Common Elements other than Limited Common Elements, it being recognized that such insurance proceeds are to be first applied to the payment for repair, replacement or reconstruction of said Common Elements other than Limited Common Elements before being applied to the repair, replacement or reconstruction of any Limited Common Elements or Units sustaining loss or damage, then the cost to repair, replace, or reconstruct said Common Elements other than Limited Common Elements in excess of available fire and casualty insurance proceeds shall be levied and collected as an assessment from the Owners of all Units in the same manner as would be levied and collected had the loss or damage sustained been solely to the Common Elements and the fire and casualty insurance proceeds been not sufficient to cover the cost of repair, replacement or reconstruction. The cost of repair, replacement or reconstruction of the Limited Common Elements and the Units sustaining loss or damage shall then be levied and collected by assessment of the Owners of the Limited Common Elements and the Owners of the Units sustaining the loss or damage in the same manner as is above provided for the apportionment of such assessment between Owners of Limited Common Elements and Units sustaining loss or damage.

9.8 Estimates of Repair; Plans and Specifications; Payment of Assessments. In the event of loss or damage to Condominium Property, the Association shall, within 60 days after any such occurrence, obtain reliable and detailed estimates of the cost of restoring damaged property to a condition as good as that which prevailed before such loss or damage. The estimate of repair shall be based upon the plans and specifications of the original building, portions of which are attached as Exhibit "D" to this Declaration as the same may from time to time be amended, or such other plans and specifications as may be approved by the Board of Directors, by all of the Owners of the damaged Units, and by not less than seventy-five percent (75%) of the Owners of all Units including the Owners of damaged Units. The Association shall be appointed as attorney in fact for each Unit Owner for the purpose of representing the Unit Owners in any proceeding, negotiation, settlement, or agreement arising from any loss or damage to the Condominium Property. Such estimates are to contain and include the cost of any professional fees and premiums for such bonds as the Board of Directors may deem to be in the best interest of the membership of said Association. Whenever it shall appear that the insurance proceeds payable for such loss or damage will not be sufficient to defray the cost of repair, replacement or reconstruction thereof, the additional money required to completely pay for such repair, replacement or reconstruction of said loss or damage whether to be paid by all of the Owners of Units or only by the Owners of Units sustaining loss or damage, or both, as herein provided, shall be paid to the Association and deposited with the Insurance Trustee, if any, not later than 30 days from the date on which the Association or the Insurance Trustee, as the case may be, shall receive the monies payable from the policies of fire and casualty insurance.

ARTICLE 10 **CONDEMNATION**

10.1 Condemnation Considered a Casualty Loss. The taking of a portion of a Unit, the Common Elements or the Limited Common Elements by eminent domain shall be deemed to be a casualty loss, and except as otherwise provided in Section 10.2 below, the awards for such

taking shall be deemed to be proceeds from insurance on account of the casualty and shall be applied and distributed by the Association in accordance with the provisions of Article 9. Even though the awards may be payable to the Owners, the Owners shall deposit the awards with the Association or Insurance Trustee, as the case may be and, in the event of failure to do so, in the discretion of the Board of Directors, a special assessment shall be made against a defaulting Owner in the amount of his award, or the amount of such award shall be set off against the sums hereinafter made payable to such Owner. If any Unit or portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Eligible Mortgagee of such Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition as provided in Section 8.1, and no provision hereof shall entitle the Owner of such Unit or other party to priority over such Eligible Mortgagee with respect to the distribution of any award or settlement to the Owner of the Unit.

10.2 Partial Condemnation. In the event that the Condominium Property is not to be terminated and one or more Units are taken in part, the taking shall have the following effects:

(a) If the taking reduces the size of a Unit and the remaining portion of that Unit can be made tenantable, the award for the taking for a portion of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium Property:

(i) The Unit shall be made tenantable and if the cost of such work exceeds the amount of the award, the additional funds shall be assessed against the Owner of the Unit.

(ii) The balance of the award, if any, shall be distributed to the Owner of the Unit and the Eligible Mortgagee of the Unit, as their respective interests may appear.

(iii) If there is a balance of the award distributed to the Owner and the Eligible Mortgagee, the share of the Common Elements or Limited Common Elements, if any, appurtenant to the Unit shall be equitably reduced. This shall be done by reducing such share by the proportion which the balance of the award so distributed bears to the market value of the Unit immediately prior to the taking, and then recomputing the shares of all Owners in the Common Elements and the Owners of all Limited Common Elements as percentages of the total of their shares as reduced by the taking.

(b) If the taking destroys or so reduces the size of a Unit so that it may not be made tenantable, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium Property:

(i) The market value of such Unit immediately prior to the taking, shall be paid to the Owner of the Unit and to each Eligible Mortgagee of the Unit, as their respective interests may appear.

(ii) The remaining portion of such Unit, if any, shall become a part of the Common Elements and shall be placed in condition for use by all of the Owners, in the manner approved by the Board of Directors; provided that if the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be approved

in the manner required for further improvement of the Common Elements under Section 6.3 above.

(iii) The shares in the Common Elements appurtenant to the Units which continue as a part of the Condominium Property shall be equitably adjusted to distribute the ownership to the Common Elements among the reduced number of Owners. This shall be done by recomputing the shares of such continuing Owners in the Common Elements as percentages of the total of the shares of such Owners as they exist prior to the adjustment.

(iv) If the amount of the award for taking is not sufficient to pay the market value of the condemned Unit to the Owner and to restore the remaining portion of the Unit in condition for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by assessments against all of the Owners who will continue as Owners of the Units after the changes in the Condominium Property affected by the taking. Such assessment shall be made in proportion to the share of such Owners in the Common Elements after the changes affected by the taking.

(c) If the market value of a Unit prior to the taking cannot be determined by agreement between the Owner and the Eligible Mortgagee and the Association within 30 days after notice by any such party that an agreement cannot be reached, such value shall be determined by three independent qualified appraisers with one appraiser to be selected by the Association, one appraiser to be selected by the Owner and Eligible Mortgagee, and the third appraiser to be selected by the two appraisers so appointed, and the fair market value of the Unit shall be deemed to be the average of the two appraisals of the fair market value of the Unit made by said appraisers having the least difference in amount. The cost of such appraisal shall be assessed against all Owners in the shares of the Owners in the Common Elements as they existed prior to the changes affected by the taking.

(d) Changes in the Units, in the Common Elements or Limited Common Elements, in the ownership of the Common Elements or Limited Common Elements and in the shares of liability for Common Expenses or Limited Common Expenses which are affected by eminent domain, shall be evidenced by an amendment of this Declaration which need be approved only by a majority of the Board of Directors.

10.3 Association Appointed As Attorney In Fact for Unit Owners. The Association shall be appointed as attorney in fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the condemnation or taking by eminent domain of the Condominium Property or any portion thereof.

ARTICLE 11 **TERMINATION**

11.1 Destruction of the Condominium Property.

(a) Notwithstanding anything to the contrary contained in this Declaration, if the Board of Directors shall determine that either of the following conditions exist:

(i) two-thirds or more of the Units in the Condominium Property shall have been destroyed or substantially damaged by fire, wind, water, or storm or other casualty or combination of casualties (including condemnation); or

(ii) the Condominium Property has been in existence in excess of 40 years and substantially all of the Units in the structure have substantially deteriorated and have been rendered substantially obsolete;

then the Board of Directors may call a meeting of the members of the Association to consider and vote upon whether to restore, repair and rebuild the Condominium Property and, if not, whether to terminate this Declaration and remove the Condominium Property from the provisions of the Act. If the termination of this Declaration and the removal of the Condominium Property from the provisions of the Act is approved by the affirmative vote of at least 67% of the Owners of all Units (based upon one vote for each Unit) and by at least 67% of all Eligible Mortgagees (based upon one vote for each Mortgage owned) after notice given as provided in Section 8.1 hereof, this Declaration and plan of condominium ownership established herein shall be subject to termination as provided in the Act and the Association shall be authorized to file on behalf of, and in the name of, the Unit Owners, and shall file, a petition for such termination and removal with the Circuit Court of Madison County, Alabama. If less than 67% of the Owners of all Units and less than 67% of the Eligible Mortgagees vote in favor of terminating the Condominium Property as herein required, the Condominium Property shall be restored, repaired and rebuilt in accordance with the provisions of Sections 9.6, 9.7 and 9.8 above.

(b) In the event that the Circuit Court of Madison County, Alabama, shall grant the petition for termination of this Declaration and the Plans, all of the Owners shall be and become tenants in common as to ownership of the Real Property and any then remaining improvements thereon. The undivided interest in the Real Property and remaining improvements, except for Limited Common Elements, held by the Owner of each Unit shall be the same as the undivided interest in the Common Elements which were formerly appurtenant to such Unit, and the lien of any Mortgage or other encumbrance upon each Unit shall attach to the percentage of undivided interest of the Owner of a Unit in the Real Property and then remaining improvements as above provided. The Owners to which the Limited Common Elements have been allocated in this Declaration shall own each such Limited Common Elements appurtenant to each Owner's Unit and the lien of any Mortgage or other encumbrance upon such Units shall attach to the undivided interest in the Limited Common Elements. Upon termination of this Declaration and the plan of condominium ownership established herein, the Owners of all Units still inhabitable shall within 60 days from the date of grant of the petition, deliver possession of their respective Units to the Association. Upon such delivery of possession, the Owners of inhabitable Units and their respective Eligible Mortgagees, as their interests may appear, shall become entitled to participate proportionately together with all Owners of uninhabitable Units in the distribution of proceeds in the possession of the Association or the Insurance Trustee. Upon such termination of this Declaration and the plan of condominium ownership established herein, the Association or the Insurance Trustee, as the case may be, shall distribute any insurance indemnity which may be due under any policy of casualty insurance to the Owners of the Units and their Eligible Mortgagees as their respective interests may appear, such distribution to be made to the Owner of each Unit in accordance with his then undivided interest in the Real Property and remaining

improvements as herein provided. The Real Property and any remaining improvements thereon shall be subject to all easements of record, except the easements created in the Condominium Documents. The assets of the Association upon termination of the plan of condominium ownership created by this Declaration shall then be distributed to the Owner of each Unit and his Eligible Mortgagee, as their respective interests may appear, in the same manner as is above provided for the distribution of any final insurance indemnity.

11.2 Termination by Unanimous Consent. Except in the event of this Declaration and Plans being terminated as provided above, this Declaration and the Plans may only be otherwise terminated by the unanimous consent of all Owners of all Units and all parties holding Mortgages, liens or other encumbrances, against any of said Units, in which event the termination of the Condominium Property shall be by such plans as may be then unanimously adopted by said Owners and parties holding any Mortgages, liens, or other encumbrances. Such election to terminate this Declaration and the Plans shall be executed in writing by all of the aforesaid parties in recordable form, and such instrument shall be recorded in the Probate Office.

11.3 The Association as Attorney In Fact for Unit Owners. The Association shall be appointed as attorney in fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the termination of this Declaration and the Plans.

ARTICLE 12 **AMENDMENT**

12.1 Amendments in Accordance with the Act. This Declaration may be amended by (i) Declarant under Section 35-8A-209(f) or 35-8A-210 of the Act, (ii) the Association under Sections 35-8A-107, 35-8A-206(d), 35-8A-208(c), 35-8A-212(a), or 35-8A-213 of the Act, or (iii) by certain Unit Owners under Sections 35-8A-208(b), 35-8A-212(a), 35-8A-213(b), or 35-8A-218(b) of the Act.

12.2 Amendment of Material Provisions. Except for the Amendments pursuant to certain provisions of the Act mentioned in Section 12.1 above, no amendment of any material provision of this Declaration as set forth below shall be effective without the vote or agreement of Owners of Units to which at least 67% of the votes in the Association are allocated (subject to the Development Rights and Special Declarant Rights reserved to the Declarant by this Declaration and by the Act and the provisions contained in Section 12.5 of this Declaration) and the approval by vote or agreement of at least 51% of the Eligible Mortgagees; provided that no amendment of this Declaration requiring higher the affirmative vote or written consent or of higher than the members of the Association of the total eligible vote shall be effective without such higher affirmative vote or written consent. "Material" provisions include any provision affecting the following:

- (i) Voting rights;
- (ii) Increases in assessments if such assessment will increase the then existing amount of assessments by more than 25%, assessment liens or subordination of assessment liens;

- (iii) Reduction in reserves for maintenance, repair and replacement of the Common Elements;
- (iv) Insurance or fidelity bonds;
- (v) Rights to use the Common Elements;
- (vi) Responsibility for maintenance and repairs;
- (vii) Boundaries of a Unit subject to a first Mortgage held by an Eligible Mortgagee;
- (viii) Leasing of Units;
- (ix) Imposition of any restrictions on the right of an Owner to sell, lease or transfer the Unit of said Owner;
- (x) Establishment of self management by the Association if professional management had been required by an Eligible Mortgagee;
- (xi) Conversion of Units into Common Elements or conversion of Common Elements into Units;
- (xii) Restoration or repair of the Condominium after hazard damage or partial condemnation in a manner other than that specified in this Declaration; and
- (xiii) Any provisions included in this Declaration, which are for the express benefit of Eligible Mortgagees.

12.3 Amendments Affecting the Commercial Units. No Amendment to this Declaration or any of the other Condominium Documents shall be adopted that would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted to the Commercial Units or the Commercial Unit Owners under this Declaration and the other Condominium Documents, including the uses of the Commercial Units permitted pursuant to this Declaration, shall not be effective without the written consent of all of the Commercial Unit Owners attached to and recorded with such amendment.

12.4 Eligible Mortgagees. Any Eligible Mortgagee who receives a written request from the Board of Directors 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 Eligible Mortgagee within 30 days of the date of the request of the Association; provided that such request is delivered to the Eligible Mortgagee by certified or registered mail, return receipt requested.

12.5 Amendments by Declarant or Association. Declarant or the Association, without the vote of the Owners, may amend this Declaration to correct any scrivener's errors, comply with applicable state, city or federal law or to bring the Condominium and Condominium

Documents into compliance with the applicable rules and regulations of the Federal National Mortgage Association (Fannie Mae).

12.6 Consent by Declarant. Until the later to occur of (i) the date upon which Declarant no longer owns any Units, (ii) the date upon which Declarant no longer has the right to appoint officers and directors of the Association pursuant to the Bylaws, or (iii) ten years after the date upon which this Declaration is recorded in the Probate Office, no Amendment to this Declaration or any of the other any of the Condominium Documents shall be adapted that would eliminate, modify, prejudice, abridge or otherwise adversely affect any rights, benefits, privileges or priorities granted to the Declarant under this Declaration or the other Condominium Documents, including the Development Rights and Special Declarant Rights reserved to the Declarant by this Declaration and by the Act, without the written consent of the Declarant.

12.7 Recording. Any Amendment to the Condominium Documents shall become effective when recorded in the Probate Office in accordance with the Act and this Declaration.

12.8 Consent to Amendment. Each Person who shall acquire any Unit in 301 East or interest in or lien or Mortgage upon any such Unit shall be deemed, by accepting a deed or conveyance of or otherwise acquiring such Unit, interest, lien or Mortgage, to have agreed and consented, within the meaning of this Declaration and of the Act to be bound by the terms and provisions of this Declaration and to have further agreed and consented that any amendment to this Declaration executed by the Declarant alone pursuant to this Declaration shall be binding and effective as written notwithstanding the fact that the number of Units or undivided interest of the Unit or Owner is the Common Elements will be changed by said amendment.

ARTICLE 13 **CONTROL OF THE ASSOCIATION**

13.1 Election of Board of Directors. Declarant, its successors or assigns, may appoint and remove the members of the Board of Directors and, in the event of vacancies, the Declarant shall fill the vacancies, until either (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, whichever shall first occur. Notwithstanding and in limitation of the foregoing, 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 not later than 90 days after conveyance of 50% of the Units to Owners other than Declarant not less than one-third of the Board of Directors shall be elected by the Owners other than Declarant. 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 one Unit within the Condominium.

13.2 Notice of Meeting. Within 60 days after the date of termination of control of the Association by the Declarant, the Association shall call and give not less than ten days nor more than 30 days' notice of a meeting of the Unit Owners for the purpose of electing the members of

the Board of Directors. Such meeting shall be called and the notice given in accordance with the Bylaws.

13.3 Status of Unsold Units.

(a) Declarant shall be deemed to be the Owner of each Unit which has not been conveyed to a person other than the Declarant. Unless otherwise provided in the Condominium Documents, the Declarant shall be entitled to all rights and privileges available to, and shall be subject to any and all obligations and duties imposed upon, the Owner of any such Unit under the Condominium Documents.

(b) Any person having a first mortgage lien against any Unit which has not been conveyed to a person other than Declarant, whether under a blanket mortgage affecting the Condominium Property generally or under a mortgage on one or more specific Units, shall be deemed to be a Eligible Mortgagee with respect to any such Unit, and shall be entitled to all rights and privileges available to a Eligible Mortgagee of any such Unit under the Condominium Documents.

(c) Notwithstanding the provisions of Sections 5.5 and 13.3(a) above, no General Assessments shall be imposed by the Association against the Declarant as the Owner of unsold Units until such time as 60 days after the conveyance of the first Unit. During such sixty-day period, Declarant shall be responsible for the Common Expenses and Limited Common Expenses of the Condominium Property, except that the Declarant shall be entitled to use and apply to the payment of such Common Expenses and Limited Common Expenses any and all General Assessments made against the Unit Owners other than Declarant and collected by the Association for Common Expenses and Limited Common Expenses, including the two months' assessment paid by each Owner at the time of his purchase as an operating reserve. The Declarant shall be solely responsible for the maintenance, repair and operation of the unsold Units.

13.4 Professional Management and Other Contracts on Behalf of the Association. Any agreement incurred by the Association prior to the passage of control of the Association from the Declarant pursuant to Section 13.1 above (including contracts for professional management of the Condominium Property, whether it be the Declarant, its successors and assigns, or any other person or entity) shall provide the following:

(a) The Association shall have the right of termination which is exercisable without penalty any time upon not more than 90 days' written notice to the other party thereto; and

(b) The Association shall have a right of termination for cause which is exercisable without penalty at any time upon not more than 30 days' written notice to the other party thereto.

ARTICLE 14 **ARCHITECTURAL COMMITTEE**

14.1 Membership of Committee. The Architectural Committee shall consist of not more than two voting members, ("Voting Members") and such additional nonvoting members serving in an advisory capacity ("Advisory Members") as the Board deems appropriate. The

following persons are hereby designated as the initial Voting Members of the Architectural Committee: Bill Peters and Noel Shinn.]

14.2 **Action by Committee.** Items presented to the Architectural Committee shall be decided by a majority vote of the Voting Members.

14.3 **Advisory Members.** The Voting Members may from time to time designate Advisory Members.

14.4 **Term.** Each member of the Architectural Committee shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein.

14.5 **Declarant's Rights of Appointment.**

(a) For so long as Declarant owns any Unit, or until such earlier date as Declarant may elect, in Declarant's sole discretion, Declarant shall have the sole and exclusive right to appoint and remove all of the members of the Architectural Committee.

(b) At such time as Declarant no longer owns any Unit or, upon Declarant's written notice to the Board that it no longer desires to exercise the right to appoint and remove members of the Architectural Committee as provided in subsection (a) above, then the members of the Architectural Committee shall be appointed by the Board.

14.6 **Adoption of Rules.** The Architectural Committee may adopt such procedural and substantive rules, not at conflict with this Declaration, as it may deem necessary or proper for the performance of its duties.

14.7 **Review of Proposed Construction.** Whenever in this Declaration the approval of the Architectural Committee is required, it shall have the right to consider all of the Plans and Specifications for the improvement or proposal in question and all other facts which, in its sole discretion, are relevant. Before the commencement of any construction of any interior improvement to a Unit, the Plans and Specifications therefor shall be submitted to the Architectural Committee, and construction thereof may not commence unless and until the Architectural Committee has approved such Plans and Specifications in writing. The Architectural Committee shall consider and act upon any and all Plans and Specifications submitted for its approval pursuant to this Declaration, and perform such other duties assigned to it by this Declaration or as from time to time shall be assigned to it by the Board, including the inspection of construction in progress to assure its conformance with Plans and Specifications approved by the Architectural Committee. The Architectural Committee shall review Plans and Specifications submitted for its review and such other information as it deems proper. Until receipt by the Architectural Committee of any information or document deemed necessary by the Architectural Committee, it may postpone review of any Plans and Specifications submitted for approval.

14.8 **Actions of the Committee.** The Architectural Committee may, by resolution, unanimously adopted in writing, designate one or two of its members or an agent acting on its behalf to take any action or perform any duties for and on behalf of the Architectural Committee.

In the absence of such designations, the vote of a majority of all of the members of the Architectural Committee, taken without a meeting, shall constitute an act of the Architectural Committee.

14.9 No Waiver of Future Approvals. The approval or consent of the Architectural Committee to any Plans and Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Architectural Committee shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans and Specifications, or other matter whatever, subsequently or additionally submitted for approval or consent by the same or a different person.

14.10 Work in Progress. The Architectural Committee, at its option, may inspect all work in progress to insure compliance with approved Plans and Specifications.

14.11 Non-liability of Committee Members. Neither the Architectural Committee, nor any member thereof, nor the Board nor any member thereof, shall be liable to the Association or to any Owner or to any other person for any loss, damage or injury arising out of their being in any way connected with the performance of the Architectural Committee's or the Board's respective duties under this Declaration unless due to the willful misconduct or bad faith of the Architectural Committee or its member or the Board or its member, as the case may be. Neither the Architectural Committee nor the members thereof shall be liable to any Owner due to the construction of any Improvement within the Property or the creation thereby of an obstruction to the view from such Owner's Unit

ARTICLE 15

SPECIAL DECLARANT RIGHTS AND DEVELOPMENT RIGHTS

15.1 Special Declarant Rights and Development Rights. The Declarant expressly reserves the right with respect to all of the Condominium Property until the fifteenth anniversary of the date of the recording of this Declaration in the Probate Office to exercise the Development Rights and Special Development Rights as provided for in this Declaration and the Act, which Development Rights and Special Declarant Rights shall include, but not be limited to, the following:

- (a) the right of Declarant to create additional Units, Common Elements or Limited Common Elements within the Condominium Property;
- (b) the right of Declarant to increase or decrease the size of any Unit or any wall located on the Real Property;
- (c) the right of Declarant to subdivide Units or convert Units into Common Elements or Limited Common Elements, or both;
- (d) the right of Declarant, in the course and process of developing the Condominium, to construct a storage area within the Building ;
- (e) the right of Declarant to complete the Improvements indicated on the Plans;

(f) the right of Declarant to maintain sales offices, management offices, signs advertising the Condominium and models;

(g) the right of Declarant to use easements through the Common Elements for the purpose of exercising the Development Rights and Special Declarant Rights and making Improvements within the Condominium;

(h) the right to appoint or remove any officer of the Association or any member of the Board of Directors of the Association during the period of control by the Declarant pursuant to Section 13.1;

(i) the right to change the interior design and arrangement of any of the Units, to alter the boundaries between Units and Common Elements;

(j) the right to increase or decrease the number of the Units so long as the Declarant, or its affiliates or equity interest holders, own the Units so altered;

(k) the right to lease any Unit which Declarant may own in the Condominium Property on such terms as Declarant may deem proper and desirable and the right to transfer any Unit subject to such lease, including leasing any such Unit to the Association for use as a management, sales, or leasing office; and

(l) the right to add or expand any recreational facilities or any other portion of the Common Elements;

(m) the right of Declarant to subdivide Unit 1 into a maximum number of eight Commercial Units having a maximum area of up to 4,964 square feet and a minimum area of 100 square feet for any one Commercial Unit.

15.2 Supplemental Declaration. The Declarant shall have the right to exercise any Development Rights and Special Declarant Rights provided for in this Declaration and described in the Act by the execution, by the Declarant alone, of a Supplemental Declaration to this Declaration, which shall comply with the provisions of this Declaration and the Act and shall be recorded in the records of the Probate Office. Such Supplemental Declaration shall have attached exhibits similar to those attached to this Declaration, describing the land and property so submitted to 301 East and this Declaration and containing such other information concerning said land and property and the Improvements constructed, or to be constructed, on said land and property as is required by the Act and by this Declaration. The Declarant may exercise the Development Rights and Special Declarant Rights described in this Declaration at different times by amendment or amendments to this Declaration and the filing of a Supplemental Declaration or Supplemental Declarations. If the Declarant elects to exercise the Development Rights or Special Declarant Rights provided for in this Declaration, the Declarant may also amend the Rules and Regulations affecting the use of the Condominium Property.

15.3 Time Limitation. The right of the Declarant to amend the Condominium Documents in order to exercise any Development Rights or Special Declarant Rights provided for in this Declaration and described in the Act by Supplemental Declaration as provided in this Declaration shall cease and terminate on the fifteenth anniversary from the date of the recording

of this Declaration in the Probate Office, and only those Improvements which shall have been submitted to this Declaration prior to said date shall be deemed to have been validly submitted to this Declaration. Except as provided in this Declaration, no other time limitation shall be imposed on the right of the Declarant to exercise the Development Rights or Special Declarant Rights provided for in this Declaration and in the Act.

15.4 Effect. Once the Declarant amends this Declaration by a Supplemental Declaration in order to exercise any Development Rights or Special Declarant Rights provided for in this Declaration or in the Act, the additional Units, Common Elements or Limited Common Elements shall be governed by and subject to all of the provisions of the Condominium Documents to the extent that the Condominium Documents are not inconsistent with the provisions of such Supplemental Declaration.

15.5 Proviso. Anything contained in this Declaration to the contrary notwithstanding, the Declarant does not commit to exercise any of the Development Rights or Special Declarant Rights provided for in this Declaration in whole or in part, nor to further develop 301 East as described in this Declaration. The Declarant reserves the absolute right, in the sole discretion of the Declarant, to decide whether or not to exercise any Development Rights or Special Declarant Rights reserved to the Declarant in this Declaration. If any Development Right is exercised by the Declarant as provided for in this Declaration and in the Act in any portion of the Condominium Property, the exercise of said Development Right shall not obligate the Declarant to exercise other Development Rights in all or any other portion of the remainder of the Condominium Property.

15.6 No Interference with Development Rights or Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any Rules and Regulations that interferes with or diminishes any Development Rights or Special Declarant Rights reserved to the Declarant in this Declaration or in the Act without the prior written consent of the Declarant. Any action taken in violation of this paragraph shall be null and void and have no force or effect.

15.7 No Assurances.

(a) No assurances are made that any Improvement that may be erected pursuant to any Development Rights or Special Declarant Rights in any part of 301 East will be compatible or will not be compatible with any existing Improvements in 301 East in terms of architectural style, quality of construction and size.

(b) No assurances are made concerning other Improvements that may be made and Common Elements or Limited Common Elements that may be created within any part of 301 East pursuant to any Development Rights or Special Declarant Rights reserved by the Declarant. It is hereby disclosed that there is a possibility that there may not be enough storage areas to allow for one storage area per Unit, and each Unit Owner, by acceptance of a deed or other conveyance of title to their Unit, acknowledges and agrees to such disclosure.

(c) No assurances are made that any Units, Common Elements or Limited Common Elements created pursuant to any Development Rights or Special Declarant Rights reserved by

the Declarant will be of the same general types and sizes as the Units, Common Elements or Limited Common Elements with other parts of 301 East.

(d) No assurances are made that all restrictions in this Declaration affecting the use, occupancy and sale or lease of the Units will apply to any Units created pursuant to any Development Rights or Special Declarant Rights reserved by the Declarant.

(e) No assurances are made concerning whether or not any Unit, Common Element or Limited Common Element will be or will not be submitted to 301 East nor is any assurance made concerning the boundaries of the Units, Common Elements or Limited Common elements, the number of the Units, Common Elements or Limited Common Elements, or the order in which any Unit, Common Element or Limited Common Element may not be included in 301 East by the exercise of the Development Rights or Special Declarant Rights reserved to the Declarant by the Act and this Declaration. The exercise by the Declarant of any Development Rights or Special Declarant Rights on any portion of the Real Property does not obligate the Declarant to exercise said right in all or any other portion of the remainder of the Real Property.

(f) No assurances are made that any storage area or areas will be constructed or added to the Condominium Property.

No assurances are made that the proportion of the Limited Common Elements to Units created pursuant to any Development Right or Special Declarant Right reserved to the Declarant will be approximately equal to the proportion existing within other parts of 301 East.

15.8 Right of Declarant to Add Recreational Facilities and Common Elements. If the Declarant elects to add or expand any recreational facilities or any other portion of the Common Elements, the Declarant shall pay all the expenses relating to the construction or the providing of such addition or expansion and shall record any amendment to this Declaration describing such property. The amendment shall be executed with the formalities of a deed and recorded in the Probate Office. No approval or action of the Association, Unit Owners or mortgagees shall be necessary for adding such additional Common Elements to condominium ownership. All costs of maintenance, repair and replacement relating to the addition or expansion of the recreational facilities or any other portion of the Common Elements shall be a Common Expense.

ARTICLE 16 **ARBITRATION**

16.1 Negotiation. The Owners and Declarant shall attempt in good faith to resolve any dispute arising out of or relating to this Declaration promptly by negotiations among the parties who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within ten days after delivery of said notice, all of the parties shall meet at a mutually acceptable time and place (by mutual agreement, such meeting may be held by telephone), and thereafter as often as they deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within 20 days of the disputing party's notice, or if the parties fail to meet

within 20 days, any party may initiate the mediation of the controversy or claim as provided in Section 14.2 below.

16.2 Mediation. If any dispute has not been resolved by negotiation as provided in Section 14.1 above, the parties shall endeavor to resolve the dispute by mediation. Unless the parties agree otherwise, the mediation shall be conducted in accordance with the Commercial Mediation Rules of the American Arbitration Association by a mediator who has the qualifications set forth hereinbelow. The place of mediation shall be in Huntsville, Alabama. The neutral third party will be selected by the mutual consent of the parties to this Declaration. If the parties encounter difficulty in agreeing on a neutral third party, they will seek the assistance of the American Arbitration Association ("AAA") in the selection process.

16.3 Arbitration. Any dispute that has not been resolved by mediation, as provided in Section 14.2 above, within 60 days of the initiation of such procedure, shall be finally settled by arbitration conducted expeditiously in accordance with the Commercial Arbitration Rules of the American Arbitration Association by a sole arbitrator; provided that persons eligible to be selected as arbitrators shall be limited to attorneys at law who are on the AAA's Large Complex Cases Panel; or who have professional credentials similar to the attorneys listed on such AAA panel. If the parties encounter difficulty in agreeing on an arbitrator, they agree that the AAA shall select the arbitrator. Notwithstanding the foregoing, if one party has requested any other party to participate in a non-binding dispute resolution procedure under Sections 16.1 or 16.2 above and the other party has failed to participate therein, the other party may initiate arbitration before expiration of the above periods. The arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. Sections 1-16. The award shall be based upon applicable law and judicial precedent and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of arbitration shall be in the same location provided for a mediation as set forth in Section 16.2 above. The arbitrator is not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives any damages in excess of compensatory damages.

16.4 Costs and Fees. The parties shall bear their respective costs in connection with the dispute resolution procedures (non-litigation) described in Sections 16.1, 16.2 or 16.3 hereof, except that the parties shall share equally the fees and expenses of any neutral third party or arbitrator and the costs of any facility used in connection with such dispute resolution procedures.

ARTICLE 17

DISCLAIMER OF WARRANTIES

DECLARANT HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES AS TO DESIGN, CONSTRUCTION, FURNISHING AND EQUIPPING OF THE CONDOMINIUM PROPERTY EXCEPT FOR THE WARRANTIES SET FORTH IN THE LIMITED WARRANTY TO BE DELIVERED TO EACH INITIAL PURCHASER OF A UNIT AND FOR ANY WARRANTIES CREATED PURSUANT TO SECTION 35-8A-413(A) OF THE ACT. AS TO ANY SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND

CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED.

ALL UNIT OWNERS, BY VIRTUE OF THEIR ACCEPTANCE OF TITLE TO THEIR RESPECTIVE UNITS (WHETHER FROM THE DECLARANT OR ANOTHER PARTY), SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND CONSEQUENTIAL DAMAGES.

ARTICLE 18
MISCELLANEOUS

18.1 Rights and Powers of Successors and Assignees. The rights and powers reserved to or exercisable by the Declarant under the Condominium Documents or the Act may be exercised by any successor or assignee of the Declarant (i) who acquires title from the Declarant by foreclosure or other judicial sale or deed in lieu of foreclosure or (ii) to whom the Declarant specifically assigns such rights and powers.

18.2 Captions and Headings. The captions and headings used in this Declaration are made for convenience and general reference only and should not be construed to describe, define, limit or expand the scope and intent of any term or provision of this Declaration.

18.3 Gender/Number and "Including". Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders. The word "including", when following any general statement, term or matter shall not be construed to limit such statement, term or matter to the specific terms or matters as provided immediately following the word "including" or to similar items or matters, whether or not nonlimiting language (such as "without limitation", "but not limited to", or words of similar import) is used with reference to the word "including" or the similar items or matters, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the general statement, term or matter.

18.4 Exhibits. Exhibits A, B, C, D, E, F and G attached to this Declaration are an integral part of this Declaration.

18.5 Invalidity and Severability. It is the intention of the Declarant that the provisions of this Declaration are severable so that if any provision is invalid or void under any applicable federal, state or local law or ordinance, decree, order, judgment or otherwise, the remainder shall be unaffected thereby.

18.6 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project in accordance with Alabama law. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

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IN WITNESS WHEREOF, the Declarant by its duly authorized officers has hereunto set their signatures and seals on the day and year first above written.

THORNTON PROPERTIES, LLC

By: 

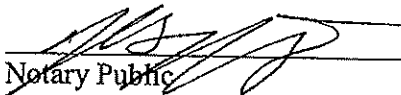
Name: Stephen F. Thornton

Title: Manager

STATE OF ALABAMA)
MADISON COUNTY)

I, John R. Baggett a Notary Public in and for said County in said State, hereby certify that Stephen F. Thornton, whose name as Manager of **THORNTON PROPERTIES, LLC**, an Alabama limited liability company, 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 the above and foregoing Declaration of Condominium, he, as such Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal of office this 3rd day of July, 2007.


Notary Public
My Commission Expires: 10-28-09

CONSENT OF MORTGAGEE

THIS DECLARATION OF CONDOMINIUM OF 301 EAST, A CONDOMINIUM IS
CONSENTED TO AND ACKNOWLEDGED BY FIRST COMMERCIAL BANK, A STATE
BANKING CORPORATION, AS MORTGAGEE.

FIRST COMMERCIAL BANK

By: W. Leigh Regues
Name: W. Leigh Regues
Title: Exec. V. P.

STATE OF ALABAMA)
MADISON COUNTY)

I, Sherry Morton, a Notary Public in and for said County in said State,
hereby certify that W. Leigh Regues, whose name as known/VP of First
Commercial Bank, an Alabama banking corporation, is signed to the foregoing Declaration of
Condominium, and who is known to me, acknowledged before me on this day that, being
informed of the contents of the above and foregoing Declaration of Condominium, he, as such
officer and with full authority, executed the same voluntarily for and as the act of said
corporation on the day the same bears date.

Given under my hand and official seal of office this 3rd day of July, 2007.

Sherry D. Morton
Notary Public
My Commission Expires: 9-20-2010

LIST OF EXHIBITS

EXHIBIT "A"	Legal Description of the Condominium Property
EXHIBIT "B"	Bylaws for 301 East Condominium Association, Inc.
EXHIBIT "C"	Percentage Ownership of Common Elements and Allocation of Common Expenses and Votes
EXHIBIT "D"	Plans of 301 East Condominium
EXHIBIT "E"	Encumbrances to Title
EXHIBIT "F"	Rules and Regulations
EXHIBIT "G"	Designation of Private Parking Spaces

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

A parcel of land situated in part of Block 323, Quigley Map Huntsville, Alabama, recorded in Map Book 1313, Page 786, in the Office of the Judge of Probate of Madison County, Alabama, being more particularly described as follows:

Begin at the Southwest corner of said Block 323, point also being on the Northernmost right of way of Holmes Avenue and the Easternmost right of way of Green Street; thence North 33 degrees 22 minutes 00 seconds West along the right of way of said Green Street for a distance of 100.00 feet; thence leaving said right of way of Green Street, North 56 degrees 38 minutes 00 seconds East for a distance of 246.99 feet to the Westernmost right of way of Monroe Street; thence South 33 degrees 22 minutes 07 seconds East and run along said right of way of Monroe Street for a distance of 50.18 feet to a point on the Northernmost right of way of Holmes Avenue; thence South 31 degrees 34 minutes 41 seconds West and run along said right of way of Holmes Avenue for a distance of 51.61 feet; thence North 58 degrees 25 minutes 01 seconds West and continue along said right of way for a distance of 3.33 feet; thence South 32 degrees 01 minutes 00 seconds West and continue along said right of way for a distance of 30.31 feet to a point on a curve turning to the right, said curve having a radius of 200.00 feet, a central angle of 24 degrees 29 minutes 59 seconds, a chord bearing of South 44 degrees 16 minutes 00 seconds West, and a chord distance of 84.87 feet; thence run along the arc of said curve and along said right of way for a distance of 85.52 feet; thence South 56 degrees 31 minutes 00 seconds West and run along said right of way for a distance of 88.37 feet to the POINT OF BEGINNING. Said parcel contains 21,641 square feet or 0.50 acres more or less.