

Unit No. \_\_\_\_\_  
Purchaser(s): \_\_\_\_\_

**DEVONSHIRE, A CONDOMINIUM**  
**RECEIPT FOR CONDOMINIUM DOCUMENTS**

The undersigned acknowledges that the documents checked below have been received or, as to plans and specifications, made available for inspection.

Name of Condominium:       DEVONSHIRE, A CONDOMINIUM  
Address of Condominium:   1794 Covington Ridge, Auburn, Alabama 36830

<u>DOCUMENT</u>	<u>RECEIVED</u>
Offering Statement Text	_____
Declaration of Condominium	_____
Articles of Incorporation	_____
Bylaws	_____
Estimated Operating Budget and Estimated Monthly Assessment	_____
Form Purchase Agreement	_____
Site Plan (in Declaration and Offering Statement)	_____
Floor Plan (in Declaration and Offering Statement)	_____

**THIS AGREEMENT IS VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN SEVEN (7) DAYS AFTER THE DATE OF EXECUTION OF THIS AGREEMENT BY THE BUYER, AND RECEIPT BY BUYER OF ALL OF THE ITEMS REQUIRED TO BE DELIVERED TO HIM BY THE DEVELOPER UNDER SECTION 35-8A-403 THROUGH 35-8A-406, CODE OF ALABAMA (1975). THIS AGREEMENT IS ALSO VOIDABLE BY BUYER BY DELIVERING WRITTEN NOTICE OF THE BUYER'S INTENTION TO CANCEL WITHIN SEVEN (7) DAYS AFTER THE DATE OF RECEIPT FROM THE DEVELOPER OF ANY AMENDMENT WHICH MATERIALLY ALTERS OR MODIFIES THE OFFERING IN A MANNER THAT IS ADVERSE TO THE BUYER. ANY PURPORTED WAIVER OF THESE VOIDABILITY RIGHTS SHALL BE OF NO EFFECT. BUYER MAY EXTEND THE TIME FOR CLOSING FOR A PERIOD OF NOT MORE THAN SEVEN (7) DAYS AFTER THE BUYER HAS RECEIVED ALL OF THE ITEMS REQUIRED. BUYER'S RIGHT TO VOID THIS AGREEMENT SHALL TERMINATE AT CLOSING.**

Executed this \_\_\_\_ day of \_\_\_\_\_, 2010.

\_\_\_\_\_, Purchaser

# **DEVONSHIRE, A CONDOMINIUM**

## **SUMMARY OF REQUIRED DISCLOSURES**

**THIS OFFERING STATEMENT CONTAINS IMPORTANT MATTERS TO BE CONSIDERED IN ACQUIRING A CONDOMINIUM UNIT.**

**THE STATEMENTS CONTAINED HEREIN ARE ONLY SUMMARY IN NATURE. A PROSPECTIVE PURCHASER SHOULD REFER TO ALL REFERENCES, ALL EXHIBITS HERETO, THE CONTRACT DOCUMENTS, AND SALES MATERIALS.**

**ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER. REFER TO THIS OFFERING STATEMENT AND ITS EXHIBITS FOR CORRECT REPRESENTATIONS.**

**THE CONDOMINIUM IS BEING SOLD AS FEE SIMPLE INTERESTS**

**THE DEVELOPER HAS THE RIGHT TO RETAIN CONTROL OF THE ASSOCIATION AFTER THE MAJORITY OF THE UNITS HAVE BEEN SOLD.**

**EXCEPT FOR THOSE WARRANTIES REQUIRED BY THE CONDOMINIUM ACT, THE DEVELOPER DOES NOT MAKE ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND THE DEVELOPER HEREBY DISCLAIMS ANY SUCH WARRANTIES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THE OWNERS AND THE ASSOCIATION ASSUME ALL RISK AND LIABILITY RESULTING FROM THE USE OF THIS PROPERTY**

An agreement to purchase a Unit is voidable by buyer by delivering written notice of the buyer's intention to cancel within seven (7) days of execution of this agreement by the buyer, and receipt by buyer of all of the items required to be delivered to him by the developer under §35-8A-403 through §35-8A-406, Code of Alabama (1975). An agreement to purchase a Unit is also voidable by buyer by delivering written notice of the buyer's intention to cancel within seven (7) days after the date of receipt from the developer of any amendment which materially alters or modifies the offering in a manner that is adverse to the buyer. Any purported waiver of these voidability rights shall be of no effect. Buyer may extend the time for closing for a period of not more than seven (7) days after the buyer has received all of the items required to be delivered to him by the developer under §35-8A-403 through §35-8A-406, Code of Alabama (1975). Buyer's right to void an agreement to purchase a Unit shall terminate upon closing of that Unit.

# **DEVONSHIRE, A CONDOMINIUM**

## **OFFERING STATEMENT**

### **1. Declaration of Condominium**

- Exhibit "A" Legal Description and Survey
- Exhibit "B" Association Articles of Incorporation
- Exhibit "C" Association Bylaws
- Exhibit "D" Percentage Interest in Common Elements

### **2. Budget**

### **3. Purchase Contract**

# DEVONSHIRE, A CONDOMINIUM

## OFFERING STATEMENT

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1. **Description of Condominium.**

The name of the condominium is DEVONSHIRE, A CONDOMINIUM (the "Condominium"). The Condominium Property is located in Lee County, Alabama, at 1794 Covington Ridge, Auburn, Alabama, 36830, and is more specifically described in the survey attached as Exhibit "A" to the Declaration of Condominium and amendments thereto, which is attached as Exhibit 1 to this Offering Statement. Use of the Property as a condominium is permitted under the Zoning Ordinance of the City of Auburn.

2. **Description of Units.**

The Condominium Property will contain fifty-seven (57) Units, each of which is two-stories and is shown on the floor plans attached hereto as Exhibit B to the Declaration of Condominium, which is attached as Exhibit 1 to this Offering Statement. Construction of the Phases 1, 2 and 3, consisting of five (5) buildings containing a total of nineteen (19) Units, is complete and Phase 4, consisting of two (2) buildings containing a total of six (6) additional Units is under construction.

3. **Description of Common Elements.**

Each Unit shall have as an appurtenance thereto an undivided share of the Common Elements which has been determined and fixed so that all Units have a proportionate share in said elements based upon relative square footage of each Unit. See Article V, Section 5.2 of the Declaration attached to this Offering Statement as Exhibit 1.

4. **Status of Title to the Real Property.**

Title to the real property underlying the Condominium is subject to the following:

a. Encumbrances. The Developer is the fee simple owner of the real property comprising the Condominium. There are no existing or intended easements located on the Condominium Property other than those described in the Declaration, which is attached to the Offering Statement as Exhibit 1 or which are shown on the condominium plats recorded in the Office of the Judge of Probate of Lee County, Alabama.

b. Closing. Upon the closing of the purchase of a Unit, the Developer will cause any mortgage to be released as to that Unit or shall have such mortgage satisfied. Each purchaser's Unit shall be free and clear of all liens, encumbrances, defects, judgments, leases and mortgages except that each such Unit shall be subject to the following matters of title; (i) the Declaration of Condominium and all exhibits attached thereto; (ii) any mortgage placed upon the purchaser's unit in connection with purchase money financing; (iii) taxes and assessments for the year of closing and subsequent years, including, but not limited to, pending and certified governmental liens, and (iv) any restrictions, reservations, conditions, limitations and easements placed of record prior to purchase or imposed by governmental authorities having jurisdiction or control over the property. Developer reserves the right to place a mortgage(s) on the Condominium Property in connection with the development and construction of the project.

5. **No Recreational or Other Commonly-Used Facilities.** There are no recreational or commonly-used facilities forming part of the Condominium.

6. **Sale, Lease or Transfer Restrictions.** The sale of Units is not restricted or controlled. Owners may lease or rent their Unit; provided that the Association or the management agent engaged by the Association is notified prior to rental or occupancy of any Unit; such notice must identify who will be occupying the Unit and the duration of such occupancy. All occupants of the Unit must comply with the terms of the Condominium Documents and the Condominium Rules and Regulations.

7. **Developer's Control of the Association.**

The developer has the right to retain control of the association after the majority of the Units have been sold. The Developer will control the Association through the appointment of a majority of the Board of Directors until such time as Developer voluntarily surrenders control or transfers control of the Association in accordance with the Condominium Act. See Article VII, Section 7.10 of the Declaration, a copy of which is attached to this Offering Statement as Exhibit 1, for further details. It is the Developer's intent to transfer control of the Association to the Owners upon the sale of ninety percent of the Units.

8. **Restrictions on Use of Units and Common Areas.**

There are several restrictions on the use of the Units and Common Areas of the Condominium. Refer to Article XII of the Declaration, a copy of which is attached as Exhibit 1 to this Offering Statement.

9. **Apportionment of Common Expenses and Common Elements.**

Each Unit in the Condominium has appurtenant to it an equal share of the common expenses and common surplus and an undivided interest in the Common Elements of the Condominium as set forth in Article VI of the Declaration attached to this Offering Statement as Exhibit 1. The undivided interest of each Unit in the Common Elements will be adjusted to reflect the proportionate ownership of each Unit Owners as new phases are developed and dedicated as part of the Condominium Property.

10. **Annual Estimated Operating Budget: Developer Guaranty.**

The estimated operating budget for the Condominium for the current year is set forth in Exhibit "3" to this Offering Statement. The Estimated Operating Budget is based on fifty-seven Units. Until control of the Association is turned over to the Owners, the Developer will pay the balance of any Common Expenses not fully paid by assessments against Unit Owners. The obligation of Unit Owners to pay assessments for Common Expenses is a personal obligation and the failure of any Unit Owner to pay such assessments may result in the filing of a lien against such Unit.

11. **Assessments and Association Fees.**

The annual regular assessment for each Unit is based upon the relative square feet of the interior area of each Unit and is payable to the Association in equal monthly installments on the first day of each month. Regular assessments do not include ad valorem taxes on individual Units or any special assessments that may be levied by the Association. For more information see Article VI of the Declaration, and the Annual Estimated Operating Budget, which are attached as Exhibits to the Offering Statement.

12. **Closing Costs.**

As set forth in the Purchase Contract, a specimen copy of which is attached to this Offering Statement as Exhibit 3, a Purchaser can expect to pay all closing costs associated with the purchase of a Unit. Such closing costs include the cost of Alabama deed taxes on the deed of conveyance, recording fees, attorneys closing fee. If purchaser finances any portion of the purchase price, purchaser shall also be responsible for paying all closing costs connected with said financing, including, but not limited to, Alabama mortgage tax, the cost of recording the mortgage, and the premium for a mortgagee policy of title insurance. All proratable items, including, without limitation, taxes and condominium assessments for the month of Closing, shall be prorated, adjusted, and paid at the time of the Closing. In addition, Purchaser shall be required to pay, at Closing, an amount equal to two times the initial monthly Common Expense assessment for the purpose of establishing a working capital fund.

13. **Financing.**

The Developer does not offer or arrange, nor is Developer responsible in any way for, financing the purchase of any Unit. If the Purchase Agreement does not contain a provision conditioning the Purchaser's obligation to perform the contract upon obtaining financing, the Purchaser will forfeit any deposits paid, if the Purchaser requires financing but does not qualify for such financing.

14. **Zoning.**

Use of the Condominium Property as a condominium is permitted under the Zoning Ordinances of the City of Auburn.

15. **Insurance.**

The Association is required to obtain, maintain and pay the premiums on property insurance covering the Common Elements, as provided in Article IX of the Declaration. Said insurance does not cover the improvements within the Unit or personal property, which must be insured by the individual Unit Owners.

16. **Escrow Account for Deposits.**

Any deposit made in connection with the purchase of a unit will be held in escrow by the listing agency and will be returned to the purchaser, if the purchaser cancels the contract pursuant to section 35-8A-408. The name and address of the listing agency is set forth in the Construction Contract.

17. **Description of Developer.**

The Developer of this Condominium is Dilworth Development, Inc., an Alabama corporation, whose principals have been involved in the development of real estate in Auburn, Alabama.

This Offering Statement has been prepared by the Developer as of the \_\_\_\_ day of \_\_\_\_\_, 2010.

**DILWORTH DEVELOPMENT, INC.**  
an Alabama corporation

By: \_\_\_\_\_  
Michael Dilworth, President

**PURCHASER IS REQUIRED TO SIGN AND DATE THE RECEIPT CONTAINED ON THE  
LAST PAGE OF THIS DOCUMENT ON THE DATE OF ACTUAL RECEIPT THEREOF.**



**Exhibit 1 to Offering Statement  
Declaration of Condominium**

See Attached

# **THIRD AMENDMENT TO THE DECLARATION OF CONDOMINIUM**

**OF**

## **DEVONSHIRE, A CONDOMINIUM**

This Third Amendment to the Declaration of Condominium of Devonshire, A Condominium is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by Dilworth Development, Inc., an Alabama corporation, hereinafter referred to as the "Developer," for itself, for its successors, grantees, and assigns.

### **RECITALS**

WHEREAS, pursuant to the terms of the Declaration of Condominium of Devonshire, a Condominium, filed of record in Condo Book 8005 at Page 74 in the Office of the Judge of Probate of Lee County, Alabama, as amended (the "Declaration"), the Developer may construct additional buildings and submit additional Units to the Condominium Property.

WHEREAS, the Developer is amending the Declaration for the purpose of adding two additional buildings to the Condominium Property, and submitting additional real property to the condominium form of ownership.

NOW THEREFORE, the Developer hereby amends the Declaration, as follows:

1. The real property described on Exhibit A, attached hereto and made a part hereof (hereinafter referred to as the "Additional Property") is hereby submitted to the condominium form of ownership. The Additional Property consists of two (2) buildings containing a total of six (6) Units.

2. The Additional Property shall be subject to the terms and conditions of the Declaration and the jurisdiction of the Association is hereby extended to the above described Additional Property.

3. Pursuant to Paragraph 6.1 of the Declaration and as a result of the Additional Property being made subject to the Condominium, each Unit Owner shall be entitled to the percentage of ownership in the Common Elements as shown on Exhibit B, attached hereto and made a part hereof, which exhibit shall amend and replace Exhibit E of the Declaration.

4. In all other respects, the Declaration remains in full force and effect; and all of the provisions of the Declaration, not amended by this amendment or any previous amendment remain binding on all present and future owners of Units in the Condominium. Capitalized terms not defined herein shall have the meaning given said term in the Declaration.

**IN WITNESS WHEREOF**, the Developer has executed this Amendment to the Declaration of Condominium of Devonshire, A Condominium on the date first written above.

**Dilworth Development, Inc.,**  
an Alabama corporation

By: \_\_\_\_\_  
Michael Dilworth, President

STATE OF ALABAMA

LEE COUNTY

I, the undersigned authority, a Notary Public in and for said State at Large, hereby certify that **Michael Dilworth**, whose name is signed to the foregoing conveyance as the President of Dilworth Development, Inc., and who is known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this the \_\_\_\_ day of \_\_\_\_\_, 2010.

(NOTARY SEAL)

MY COMMISSION EXPIRES:

\_\_\_\_\_  
Notary Public, State at Large

This instrument prepared by:

René E. Richard  
Haygood, Cleveland, Pierce,  
Mattson & Thompson  
611 East Glenn Avenue  
Auburn, Alabama 36830

**Exhibit A**  
**Legal Description of Additional Property**

**PHASE 4**

**Exhibit B to Declaration**  
**Undivided Interest in Common Elements of Each Unit Owner**

Each Unit Owner owns an undivided interest in Common Elements in proportion to the relative size of each Unit, as set forth below:

<u>Unit #</u>	<u>Square Feet</u>	<u>Undivided Interest in Common Elements</u>
201	2550	4.62%
202	2850	5.16%
203	2850	5.16%
204	2550	4.62%
301	2550	4.62%
302	2850	5.16%
303	2850	5.16%
304	2550	4.62%
401	2650	4.80%
402	2650	4.80%
403	2650	4.80%
404	2650	4.80%
1101	1900	3.44%
1102	1900	3.44%
1103	1900	3.44%
1201	1900	3.44%
1202	1900	3.44%
1203	1900	3.44%
1301	1980	3.58%
1302	1980	3.58%
1303	1980	3.58%
1401	1900	3.44%
1402	1900	3.44%
1403	1900	3.44%

SECOND AMENDMENT TO THE DECLARATION OF CONDOMINIUM  
OF

DEVONSHIRE, A CONDOMINIUM

This Second Amendment to the Declaration of Condominium of Devonshire, A Condominium is made and entered into this 24<sup>th</sup> day of November, 2009, by Dilworth Development, Inc., an Alabama corporation, hereinafter referred to as the "Developer," for itself, for its successors, grantees, and assigns.

RECITALS

WHEREAS, pursuant to the terms of the Declaration of Condominium of Devonshire, a Condominium, filed of record in Condo Book 8005 at Page 74 in the Office of the Judge of Probate of Lee County, Alabama (the "Declaration"), the Developer may unilaterally amend the Declaration as may be required by any lending institution.

WHEREAS, in order to comply with certain Fannie Mae requirements, the Developer is amending the Declaration for the purpose of explicitly stating the requirement that Mortgagees receive timely written notice of certain actions.

NOW THEREFORE, the Developer hereby amends the Declaration, as follows:

1. Paragraph 9.10 shall be amended to include the text set forth below in all caps and bold font:

9.10. Insurance Trustee: Share of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their Mortgagees as their interest may appear, and shall provide that all proceeds covering Property losses shall be paid to the Association, as Insurance Trustee for each of the Unit Owners in the percentages as established by the Declaration, which said Association, for the purpose of these provisions, is herein referred to as the Insurance Trustee. The duty of the Insurance Trustee shall be to **GIVE TIMELY WRITTEN NOTICE OF ANY CASUALTY LOSS OR CONDEMNATION TO THE UNIT OWNERS AND THEIR MORTGAGEES AND TO** receive such proceeds as are paid and hold the same in trust for the purpose elsewhere stated herein and for the benefit of the Unit Owners and their Mortgages. The Insurance Trustee shall have the power to adjust all claims arising under insurance policies purchased by the Association; to bring suit thereon in its name and/or in the name of other insured; to deliver releases on payment of claims; to compromise and settled such claims; and otherwise to exercise all the rights, powers, and privileges of the compromise and settle such claims; and otherwise to exercise all the rights, powers and privileges of the Association and each Unit Owner and any other holder of an insured interest in the Condominium Property under such insurance policies, however, the Actions of the Insurance Trustee shall be subject to the approval of any first Mortgagee if the claim shall involve more than one Unit, and only if one Unit is involved, such Actions shall be subject to approval of any first Mortgagee holding a mortgage and encumbering such Unit.

2. Paragraph 15.1(a) of **ARTICLE XV AMENDMENTS** shall be amended to include the text set forth below in all caps and bold font:

15.1 **By Owners.** Except as otherwise provided herein, this Declaration may be amended in the following manner:

(a) **Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered, **AND SAID NOTICE SHALL BE DELIVERED TO EACH MORTGAGEE, TO THE EXTENT THAT ITS CONSENT TO THE PROPOSED AMENDMENT IS REQUIRED HEREIN.**

3. In all other respects, the Declaration remains in full force and effect; and all of the provisions of the Declaration, not amended by this amendment or any previous amendment remain binding on all present and future owners of Units in the Condominium. Capitalized terms not defined herein shall have the meaning given said term in the Declaration.

**IN WITNESS WHEREOF**, the Developer has executed this Second Amendment to the Declaration of Condominium of Devonshire, A Condominium this 24<sup>th</sup> day of November, 2009.

Book/Pg: 8005/800  
Term/Cashier: SCAM3 / MW  
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Recorded: 11-24-2009 15:12:10  
REC Recording Fee  
Total Fees: \$ 11.00

**Dilworth Development, Inc.,**  
an Alabama corporation

By:   
Michael Dilworth, President

STATE OF ALABAMA

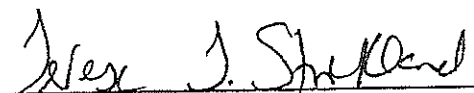
LEE COUNTY

I, the undersigned authority, a Notary Public in and for said State at Large, hereby certify that **Michael Dilworth**, whose name is signed to the foregoing conveyance as the President of Dilworth Development, Inc., and who is known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this the 24<sup>th</sup> day of November, 2009.

(NOTARY SEAL)

MY COMMISSION EXPIRES:  
5/24/2016

  
Notary Public, State at Large

Return By: HAYGOOD, CLEVELAND PIERCE, LLP  
P.O. Box 3310  
AUGURN, AL 36831

**FIRST AMENDMENT TO THE DECLARATION OF CONDOMINIUM**

**OF**

**DEVONSHIRE, A CONDOMINIUM**

This First Amendment to the Declaration of Condominium of Devonshire, A Condominium is made and entered into this 15<sup>th</sup> day of July, 2009, by Dilworth Development, Inc., an Alabama corporation, hereinafter referred to as the "Developer," for itself, for its successors, grantees, and assigns.

**RECITALS**

WHEREAS, pursuant to the terms of the Declaration of Condominium of Devonshire, a Condominium, filed of record in Condo Book 8005 at Page 74 in the Office of the Judge of Probate of Lee County, Alabama (the "Declaration"), the Developer may construct additional buildings and submit additional Units to the Condominium Property.

WHEREAS, the Developer is amending the Declaration for the purpose of adding two additional buildings to the Condominium Property, and submitting additional real property to the condominium form of ownership.

NOW THEREFORE, the Developer hereby amends the Declaration, as follows:

1. The real property described on Exhibit A, attached hereto and made a part hereof (hereinafter referred to as the "Additional Property") is hereby submitted to the condominium form of ownership. The Additional Property consists of two (2) buildings containing a total of seven (7) Units.
2. The Additional Property shall be subject to the terms and conditions of the Declaration and the jurisdiction of the Association is hereby extended to the above described Additional Property.
3. Pursuant to Paragraph 6.1 of the Declaration and as a result of the Additional Property being made subject to the Condominium, each Unit Owner shall be entitled to the percentage of ownership in the Common Elements as shown on Exhibit B, attached hereto and made a part hereof, which exhibit shall amend and replace Exhibit E of the Declaration.
4. In all other respects, the Declaration remains in full force and effect; and all of the provisions of the Declaration, not amended by this amendment or any previous amendment remain binding on all present and future owners of Units in the Condominium. Capitalized terms not defined herein shall have the meaning given said term in the Declaration.



IN WITNESS WHEREOF, the Developer has executed this First Amendment to the Declaration of Condominium of Devonshire, A Condominium this 15<sup>th</sup> day of July, 2009.

Dilworth Development, Inc.,  
an Alabama corporation

By:   
Michael Dilworth, President

STATE OF ALABAMA

LEE COUNTY

I, the undersigned authority, a Notary Public in and for said State at Large, hereby certify that **Michael Dilworth**, whose name is signed to the foregoing conveyance as the President of Dilworth Development, Inc., and who is known to me, acknowledged before me on this day that, being informed of the contents of this conveyance, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and seal of office this the 15<sup>th</sup> day of July, 2009.

(NOTARY SEAL)

MY COMMISSION EXPIRES:

  
Notary Public, State at Large

**GERALD A. MATTSON, JR.**  
Notary Public, AL State at Large  
My Comm. Expires Nov. 3, 2010

This instrument prepared by:

René E. Richard  
Haygood, Cleveland, Pierce,  
Mattson & Thompson  
611 East Glenn Avenue  
Auburn, Alabama 36830

**Exhibit A**  
**Legal Description of Additional Property**

**8005 655**  
**CONDO Book & Page**

**Phase Two of Devonshire, A Condominium**

Commencing at the Northeast corner of Section 33, Township 19 North, Range 26 East, Auburn, Lee county, Alabama; thence South 69°58'47" West, a distance of 1398.41 feet to a found three quarter inch crimp top iron pin in the Southeastern right of way of Interstate 85 and the Northeast corner of Lot 540A, Moores Mill Subdivision, 5th Addition, Redivision of Lot 540 (Plat Book 25, Page 51); thence South 01°03'09" East along the Eastern line of Lot 540A for a distance of 610.82 feet to a found three quarter inch crimp top iron pin at the Southeasterly corner of said lot 540A; thence South 88°51'15" West along the Southerly line of Lot 540A, Moores Mill, Fifth Addition for a distance of 339.50 to a found three quarter inch open top iron pin; thence South 47°21'26" West, 401.30 feet to a set half inch rebar (CA-788) located at the Southeast corner of Phase 2, Devonshire, said point being the point of beginning of Phase 2, more fully described towit: from this POINT OF BEGINNING, thence North 59°05'51" West along the Southerly line of said Lot 540A, a distance of 22.15 feet to a set half inch rebar (CA-788); thence continue along the Southerly line of Lot 540A North 66°37'14" West, a distance of 125.76 feet; thence leaving said lot line North 24°17'12" East, a distance of 163.14 feet to a set half inch rebar (CA-788); thence North 39°23'29" East, a distance of 32.12 feet to a set half inch rebar (CA-788); thence South 68°59'21" East, a distance of 90.58 feet to a set half inch rebar (CA-788); thence North 87°14'39" East, a distance of 66.56 feet to a set PK nail in asphalt; thence South 02°45'21" East, a distance of 29.31 feet to a PK nail found in asphalt; thence South 30°54'10" West, a distance of 205.41 feet to the Point of Beginning.

Containing 0.74 Acres, more or less.

**Phase Three of Devonshire, A Condominium**

Commencing at the Northeast corner of Section 33, Township 19 North, Range 26 East, Auburn, Lee county, Alabama; thence South 69°58'47" West, a distance of 1398.41 feet to a found three quarter inch crimp top iron pin in the Southeastern right of way of Interstate 85 and the Northeast corner of Lot 540A, Moores Mill Subdivision, 5th Addition, Redivision of Lot 540 (Plat Book 25, Page 51); thence South 01°03'09" East along the Eastern line of Lot 540A for a distance of 610.82 feet to a found three quarter inch crimp top iron pin at the Southeasterly corner of said Lot 540A and the Southeasterly corner of Phase 3, Devonshire, A Condominium, said point being the point of beginning of said Phase 3, more fully described towit: from this POINT OF BEGINNING, thence South 88°51'15" West along the Southerly line of Lot 540A, Moores Mill, Fifth Addition for a distance of 116.64 feet to a set half inch rebar (CA-788); thence North 15°29'28" West, a distance of 160.23 feet to an "x" in a concrete walk; thence South 88°50'45" West, a distance of 4.60 feet an "x" in a concrete walk; thence North 00°00'00" West, a distance of 76.26 feet to a set half inch rebar by Precision Surveying (CA-788); thence South 90°00'00" East, a distance of 159.82 feet to a set half inch rebar (CA-788) in the Easterly line of Lot 540A, Moores Mill Subdivision, Fifth Addition; thence South 01°03'09" East along said Easterly line a distance of 228.28 feet to the point of beginning.

Containing 0.76 Acres, more or less.

**Exhibit B to Declaration**  
**Undivided Interest in Common Elements of Each Unit Owner**

Each Unit Owner owns an undivided interest in Common Elements in proportion to the relative size of each Unit, as set forth below:

<u>Unit #</u>	<u>Square Feet</u>	<u>Undivided Interest in Common Elements</u>
201	2550	5.82%
202	2850	6.50%
203	2850	6.50%
204	2550	5.82%
301	2550	5.82%
302	2850	6.50%
303	2850	6.50%
304	2550	5.82%
401	2650	6.04%
402	2650	6.04%
403	2650	6.04%
404	2650	6.04%
1301	1980	4.52%
1302	1980	4.52%
1303	1980	4.52%
1401	1900	4.33%
1402	1900	4.33%
1403	1900	4.33%

**DECLARATION OF CONDOMINIUM  
OF  
DEVONSHIRE, A CONDOMINIUM**

**ARTICLE I**

**PREAMBLE, NAME AND LEGAL DESCRIPTION**

The undersigned, **DILWORTH DEVELOPMENT, INC.**, whose address is 2525 Glen Brooke Drive, Auburn, Alabama, 36830, ("Developer"), being the holder of fee simple title to that certain real property located in Lee County, Alabama, and more particularly described hereinafter, does hereby submit such lands as described in Paragraph 1.2 below together with the improvements thereon to the condominium form of ownership in accordance with the provisions of Title 35, Chapter 8A, Code of Alabama (1975), and the following provisions:

1.1 Name. The name by which this condominium is to be identified is **Devonshire, a Condominium** (the "Condominium").

1.2 Legal Description. Developer is the owner of that certain real property located in Lee County, Alabama, more particularly described in the attached Exhibit "A", which is incorporated herein by this reference (the "Property"). By this Declaration, the Developer intends to submit the portion of said property described on Exhibit A-1, together with those easements more specifically and particularly described in Article IV herein, to the Condominium form of ownership thereby establishing a Condominium under the provisions of the Condominium Act.

1.3 Additional Property. Developer reserves the right to submit Additional Property to the provisions of this Declaration. Upon recording an amendment to this Declaration with respect to Additional Property, the Units thereon shall be treated as a part hereof as if originally so included, and each Unit Owner of such phased unit shall have the same rights, privileges and obligations as an original owner. Each owner shall also acquire common interest in the Common Elements included in each new phase, as if originally included herein.

1.4 Development. The Condominium will initially consist of three (3) buildings containing a total of eleven (11) Units, portions of the Private Drive, mailbox facilities, walkways, driveways and green and landscaped areas, all situated on a portion of the land forming the Condominium Property and shown on Exhibit A-1. Developer intends to construct additional buildings and submit additional Units to the Condominium Property as sales warrant; however, additional Units need not be built.

**ARTICLE II  
DEFINITIONS**

The terms used in this Declaration and in its Exhibits, including the Articles of Incorporation and Bylaws of the Association, shall be defined in accordance with the provisions of Title 35, Chapter 8A, Code of Alabama (1975) and as follows unless the context otherwise requires:

2.1 Additional Property shall mean the land, and improvements thereon, that may, at a subsequent time, be added to the Condominium Property and become a part of the Condominium.

2.2 Ad Valorem Real Estate Taxes shall mean those real property taxes assessed against the Units and their respective undivided interests in the Common Elements by the Revenue Commissioner of Lee County, Alabama.

2.3 Articles of Incorporation shall mean the Articles of Incorporation of the Association, as they may be amended from time to time. A copy of the present Articles of Incorporation are attached hereto as Exhibit "C" and incorporated herein by reference.

2.4 Assessment shall mean a proportionate share of the funds required for the payment of the Common Expenses, which from time to time may be levied against each Unit Owner.

2.5 Association shall mean **Devonshire Condominium Association, Inc.**, a non-profit Alabama corporation, and its successors, which is the entity responsible for the administration, operation and management of the Condominium.

2.6 Bylaws shall mean the duly adopted Bylaws of the Association as they may be amended from time to time. A copy of the present Bylaws are attached hereto as Exhibit "D" and incorporated herein by reference.

2.7 Common Elements shall mean all of those items defined in the Condominium Act as Common Elements and those items hereinafter declared to be included within the Common Elements.

2.8 Common Expenses shall include:

a. Expenses of administration, operation and management of the Condominium Property and of the Association including, without limitation, compensation paid by the Association to a manager, accountant, attorney or other employee or independent contractor.

b. Expenses of maintenance, operation, repair and replacement of the Common Elements, as well as all other costs and expenses properly incurred by the Association.

c. Expenses declared Common Expenses by the provisions of this Declaration, the Condominium Documents or the Condominium Act.

d. Any valid charge against the Condominium Property as a whole.

e. All costs and expenses incurred by the Association in connection with regulatory compliance.

f. All reserves for replacement and maintenance of the Condominium Property as required by the Condominium Act.

Common Expenses shall not include Ad Valorem Real Estate Taxes assessed against each Condominium Parcel.

2.8 Common Surplus shall mean any excess of all receipts of the Association over the amount of the Common Expenses.

2.10 Condominium shall mean and refer to Devonshire, a Condominium, and consists of the Condominium Property submitted to the condominium form of ownership by this Declaration.

2.11 Condominium Act shall mean the provisions of Title 35, Chapter 8A, Code of Alabama (1975), as the same are constituted on the date of recording of this Declaration.

2.12 Condominium Documents shall include this Declaration, together with exhibits attached hereto and all other documents expressly incorporated herein by reference, as the same may be amended from time to time.

2.13 Condominium Parcel is a Unit, together with the undivided share in the Common Elements and Common Surplus which are appurtenant to the Unit.

2.14 Condominium Plat shall mean, collectively, each map or plat of the Condominium Property recorded in the Office of the Judge of Probate of Lee County, Alabama containing the location and dimensions of each Unit as built.

2.15 Condominium Property shall mean and include the lands, leaseholds, easements and personal property including, without limitation, the Common Elements that are subjected to condominium ownership from time to time as part of this Condominium, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with this Condominium.

2.16 Condominium Rules and Regulations shall mean and refer to the rules and regulations concerning the use of Condominium Property as may be promulgated and amended from time to time by the Association in the manner provided by its Articles of Incorporation and Bylaws.

2.17 Declaration shall mean this Declaration of Condominium of Devonshire, a Condominium, as it may be amended from time to time.

2.18 Developer shall mean Dilworth Development, Inc., an Alabama corporation, its successors and assigns. No party other than Dilworth Development, Inc. shall exercise the rights and privileges reserved herein to the Developer unless such party shall receive and record in the Office of the Judge of Probate of Lee County, Alabama, a written assignment from Dilworth Development, Inc. of all or a portion of such rights and privileges.

2.19 Golf Course shall mean the golf course at Moore's Mill Club located adjacent to the Property.

2.20 Governmental Authority shall mean any and all city, county, state, and federal governmental or quasi-governmental agencies, bureaus, departments, divisions, or regulatory authorities having jurisdiction over any portion of the Condominium.

2.21 Management Company shall mean any entity, and its successor and assigns, engaged to manage the Condominium pursuant to the Management Contract.

2.22 Management Contract shall mean the agreement between the Association and any Management Company which provides for the ongoing management of the Condominium.

2.23 Mortgagee shall mean the Developer (and any successor-in-interest to the Developer as to a purchase-money mortgage), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), or any trust, savings and loan association, credit union, mortgage company, bank, insurance company, or commercial loan company licensed to do business in the State of Alabama, to the extent that any of the same hold a first mortgage encumbering any Unit.

2.24 Occupant shall mean and include any Owner, the family members, guests, tenants, agents, servants, employees, and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees, and any other person who occupies or uses any Unit within the Condominium. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Unit.

2.25 Owner shall mean and refer to the record owner, including Developer, of fee simple title to any Unit whether a corporation, partnership, proprietorship, association, or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Unit at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser, or vendor who has an interest in any Unit solely by virtue of a lease, contract, installment contract, or other agreement.

2.26 Private Drive shall mean those certain roads within the Condominium Property shown on the attached Exhibit "B" and labeled (Private) and providing access to the Units from Covington Ridge.

2.27 Unit shall mean a condominium unit as that term is defined in the Condominium Act and in Article V of this Declaration and refers to that part of the Condominium Property which is subject to exclusive ownership by one or more persons.

2.28 Utility Services shall include, without limitation, electric power, cable television, water, garbage and sewer disposal and telephone service, and all other public service and convenience facilities.

### **ARTICLE III**

#### **EXHIBITS**

The Exhibits referred to in this Declaration shall include the following:

Exhibit A". A legal description of the land on which Developer intends to construct Devonshire, a Condominium and a proposed site plan thereof.

Exhibit "A-1". A legal description and a survey of land committed to the condominium form of ownership pursuant to this Declaration and comprising the Condominium Property with sufficient detail to identify the Common Elements and each Unit and their relative locations and approximate dimension. As set forth in Exhibit "A", each Unit is identified by a distinctive number so that no Unit bears the same designation as any other Unit.

Exhibit "B". Site and floor plans

Exhibit "C". The Articles of Incorporation of the Association.

Exhibit "D". The Bylaws of the Association.

Exhibit "E". Percentage Interest in the Common Elements.

### **ARTICLE IV**

#### **EASEMENTS, LIENS AND ENCUMBRANCES**

The following easements are hereby expressly reserved or have been granted:

4.1 General Easements. Non-exclusive easements over, across and under the Condominium Property are expressly provided for and reserved in favor of the Developer, the Owners and their respective lessees, guests and invitees, as follows:

a. Utilities. Easements are reserved over, across and under the Condominium Property as may be required for Utility Service in order to serve the Condominium adequately, including, without limitation, easements for the purpose of allowing such access rights as are necessary to utilize and service utility equipment located within the Condominium Property. Specific utility easements that exist on Condominium Property, if any, are set forth on the Condominium Plat.

b. Encroachments. In the event that any Unit shall encroach upon any of the Common Elements or upon any other Unit, or in the event any Common Element shall encroach upon any Unit, then an easement shall exist to permit such encroachment so long as the same shall exist.



c. Right of Way. An easements shall exist for ingress and egress over the Private Drive and such walks and other rights-of-way serving the Units as shall be necessary to provide for reasonable access from the public rights-of-way to each Unit.

4.2 Association Easements. Except as limited by the Condominium Act, the Association may grant easements from time to time over the Common Elements.

4.3 Developer Easements. The Developer hereby reserves the following exclusive easements and rights to grant easements.

a. Marketing, Sales and Rental. The Developer reserves exclusive easement rights over and across the Condominium Property for the purpose of marketing, sales and rental of Units and other accommodations owned or operated by the Developer or one of its affiliates on adjoining properties which are not part of the Condominium.

b. Governmental Requirements. The Developer reserves the right to grant such easements from time to time as may be required by any governmental agency. Such easements shall specifically include, without limitation, any environmental easements required by state or federal environmental agencies for so long as Developer holds any interest in any Unit subject to this Declaration.

c. Developer Easements. The Developer reserves unto itself, for so long as it holds any interest in any Unit (including leaseholds), specific easement rights over and across the Condominium Property as it may deem necessary for its use from time to time.

d. Construction Easements. The Developer, on behalf of itself and its affiliates, hereby reserves easement rights over, under and across the Condominium Property as is necessary from time to time for the purpose of constructing improvements on Condominium Property and property adjacent to and in the vicinity of the Condominium Property, but only if access thereto is otherwise not reasonably available.

4.4 Other Easements, Liens and Encumbrances. Other easements, if any, may have been granted over the Condominium Property as set forth on the Condominium Plat.

## **ARTICLE V**

### **UNITS AND COMMON ELEMENTS**

5.1 Description of Units. Each Unit to be constructed as part of the Condominium is two-stories and is shown on the floor plans attached hereto as Exhibit B. Each Unit shall include that part of a building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

a. Upper and Lower Boundaries. The upper and lower boundaries of the Unit shall be the following boundaries extended to the intersection with the perimeter boundaries:

(1) Upper Boundaries. The plane of the lowest surface of the unfinished surface of the roof and the plane of the lowest surface of the unfinished entry ceiling.

(2) Lower Boundaries. The plane of the lowest surface of the top of the unfinished floor slab and the plane of the surface of the top of the unfinished entry floor slab.

b. Perimeter Boundaries. The perimeter boundaries of the Unit shall be the following boundaries extended to any intersection with the upper and lower boundaries:

(1) Exterior Building Walls. The intersecting vertical planes of the innermost unfinished surfaces of the exterior wall of the building bounding such Unit, including doors and windows, and as to the entry which is a part of a Unit. Such boundaries shall be the intersecting vertical planes which include all of such structures of the innermost unfinished surface of the exterior concrete floor slab thereof. The perimeter boundaries of certain Units include the exterior wall bounding the courtyard and the porch forming a part thereof.

(2) Interior Building Walls. The vertical planes of the innermost unfinished surface of the interior walls bounding such Unit extended to intersections with other perimetrical boundaries.

5.2 Private Elements. Each Unit shall include all mechanical, plumbing and electrical fixtures and wiring and ducts located within and servicing such Unit, such as electrical power, water, heating and air conditioning, sanitary and storm sewer facilities, and including all lines, pipes, ducts, flues, chutes, conduits, cables, wires and all other apparatus and installations in connection therewith, whether located in the Common Elements or the Unit. Each Unit shall also include the attic space forming part of the Unit.

5.3 Common Elements. Any right, title or interest in a Unit shall automatically carry with it as an appurtenance and without the necessity of specific reference thereto its respective undivided share of the Common Elements and a right to use the Common Element in conjunction with the other Owners. The Common Elements of the Condominium are all portions of the Condominium Property, other than the Units, and will include the common areas shown on the plat and plans attached hereto as Exhibit A-1. The Condominium is not intended to include amenities other than as shown on Exhibit A. Common Elements include the following:

a. All improvements and parts of the Condominium Property which are not a Unit or Private Element, including but not limited to the roof of each building comprising the Unit.

b. The Private Drive, parking areas, walkways and other means of ingress and egress to the Condominium Property.

c. Electrical power units, gas, water lines, sanitary and storm sewer facilities, and including all lines, pipes, ducts, flues, chutes, conduits, cables, wires and all other apparatus

and installations in connection therewith, located in the Common Elements, except when such is otherwise designated as a Private Element (e.g. the lines bringing service to the Unit).

d. All foundations, slabs, columns, beams and supports of the Building, and such component parts of exterior walls and walls separating Units, roofs, floors and ceilings as are not described herein as Private Elements and the space in between, including attic space accessed from within a Unit.

e. Lawn areas, landscaping, walkways, sidewalks, curbs and steps forming part of the Condominium Property.

f. All area, outdoor and exterior lights not metered to individual Units.

g. All other parts of the Condominium Property existing for the common use or necessity of the existence, maintenance and safety of the Condominium.

h. All other items listed as such in the Act.

5.4 Limited Common Elements. Those portions of the Common Elements which are assigned to the exclusive use of a certain Unit or Units, as hereinafter set forth, are Limited Common Elements. In addition to those Limited Common Elements assigned pursuant to §35-8A-202(2) and (4) of the Act, each Unit is assigned as Limited Common Elements the entry ways, door steps, patios, and the veranda and patio areas (if any) serving the Unit and any drives and parking areas assigned to the Unit. In the event that any of the items described herein or other Common Elements serve more than one but less than all Units, such items shall be Limited Common Elements appurtenant to the Units served thereby. Reassignment of Limited Common Elements may be accomplished pursuant to §35-8A-208(b) of the Act. Assignment of Common Elements not previously assigned as Limited Common Elements may be accomplished upon the approval of a majority of the Board of Directors in accordance with procedures set forth in §35-8A-208(c) of the Act.

## ARTICLE VI COMMON ELEMENTS

6.1. Ownership. Each Unit has an undivided interest in the Common Elements as set forth in Exhibit "E" hereto annexed, and as expressed in this Declaration. The percentage of undivided interest of each Unit in the Common Elements is determined by dividing the total number of square feet of interior area of each Unit by the total number of square feet of interior area in all Units. The undivided interest of each Unit in the Common Elements shall be permanent in character but will be altered without the consent of the Unit Owners as new phases are developed and dedicated as part of the Condominium Property. Any amendment to the Declaration which subjects a new phase to the terms hereof will include a statement as to undivided interest of each Unit Owner following the inclusion of additional Units. For purposes of percentage of ownership in the Common Elements, percentage of Common Expenses, and percentage of Common Surplus, the percentages as set out on Exhibit E shall govern. The ownership interest in the Common Elements

shall be an undivided interest, and except as provided in the Act and this Declaration shall remain undivided. No Unit Owner shall bring any action for partition or division of the Common Elements. The ownership interest in the Common Elements 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 Unit Owner, and the holder of any 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 Unit's interest in the Common Elements and Common Surplus and each Unit's share of the Common Expenses as may result from the addition, if any, and to have so agreed and consented to any amendment or amendments to this Declaration effectuating the same.

6.2. Use. Each Unit Owner shall have the right to use the Common Elements (except any portions thereof designated as a Limited Common Element and restricted to the exclusive use of and as an appurtenance to a Unit, and the semi-exclusive parking spaces and areas in common with the Unit Owners of other Units as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of the Condominium Property. 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 of the Association. 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 the Declaration and Bylaws.

6.3. Share of Common Expenses. Each Unit Owner shall be assessed and is individually liable for a proportionate share of the Common Expenses, and the proportionate share of the Common Expenses shall be the same ratio as the Unit Owner's percentage ownership in the Common Elements as the case may be. Payment of Common Expenses shall be in such amounts and at such times as determined in the Bylaws. Assessments shall be collected by the Association on an monthly basis. No Unit Owner shall be exempt from payment of his or her proportionate share of the Common Expenses by waiver or nonuse or non-enjoyment of the Common Elements, or by abandonment of his Unit. Common Expenses shall include, but shall not necessarily be limited to expenditures made, or liabilities incurred by the Association, together with payments or obligations to reserve accounts. In addition to payment of monthly assessments to the Association for Common Expenses, each Owner shall pay the annual assessment due to the Moore's Mill Homeowners Association, Inc. for use and enjoyment of common areas maintained thereby.

6.4. Late Payment of Assessments. Assessments for Common Expenses or installments thereon, paid on or before fifteen (15) days after the date when due shall bear no interest, but all sums not paid on or before fifteen (15) days after the date when due shall bear such late charges, penalties, interest and other costs and expenses, at a rate set by the Board, but not to exceed the maximum legal rate, together with all expenses, including Attorney's fees incurred by the Association in any undertaking to collect such unpaid Assessments and expenses. All payment upon account shall be first applied to such late charges, penalties, interests and other costs and expenses, including attorneys' fees, and then to the Assessment payment due. The Association may, in the manner provided for in the Bylaws, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Bylaws, and rules and regulations of the Association.

6.5. Liens for Assessments. The Association is hereby granted a lien upon each Unit, any Limited Common Elements exclusively allocated to such Unit, and its appurtenant undivided interest in Common Elements, which lien shall secure and does secure the moneys due for all Assessments now or hereafter levied or subject to being levied against the Unit Owner which lien shall also secure such late charges, penalties and interest, if any, which may be due on the amount of any delinquent Assessment owing to the Association, and which lien shall also secure all costs and expenses, including a reasonable attorneys' fee, which may be incurred by the Association in enforcing this lien upon said Unit and its appurtenant undivided interest in the Common Elements.

6.6. Priority of Lien. The Association shall have a lien for nonpayment of Common Expenses as is provided by the Act. 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 granted to the Association. A lien for Common Expenses shall not be affected by any sale or transfer of a Unit, except as herein provided. Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Unit shall be superior to all other liens, except; (a) liens and encumbrances affecting a Unit recorded before the recordation of this Declaration; (b) the lien of any Mortgage encumbering a Unit which has been recorded before the date on which the Assessments sought to be enforced became delinquent and (c) liens for real estate taxes and other governmental assessments or charges against the Unit. Notwithstanding anything provided herein to the contrary, in the event any Mortgagee exercises the foreclosure rights provided in its Mortgage and at such foreclosure sale either acquires title to or sells to a third party its interest in a Unit, then such Mortgagee or its purchaser or transferee at such foreclosure sale shall (i) not be liable for the then unpaid portion of any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure by such Mortgagee but (ii) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Unit from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Unit has been foreclosed from the personal obligation to pay all Assessments and any other charges levied, assessed or incurred by the Association and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage on such Owner's Unit.

6.7. Disposition of Surplus. Each Unit shall carry with it a proportionate share of Common Surplus, as the case may be, and the proportionate share of Common Surplus shall be the same ratio as that Unit Owners' percentage ownership of the Common Elements; or in the alternative, such surplus or any portion thereof may be added to a reserve fund for maintenance, repair, and replacement of the Common Elements, at the sole discretion of the Association.

## ARTICLE VII THE ASSOCIATION

7.1. Powers and Duties. The operation and administration of the Condominium shall be by the Association, pursuant to the provisions of the Act. The Association shall be a not-for-profit Alabama Corporation incorporated by Articles of Incorporation recorded in the Office of the Judge of Probate of Lee County, Alabama. The Association shall be an entity which shall have the

capability of bringing suit and being sued with respect to the exercise or non-exercise of its powers. The Association shall have exclusive authority and power to maintain a class action and to settle a cause of action on behalf of Unit Owners of the Condominium with reference to the Common Elements, the roof and structural components of a Building or other improvement, and mechanical, electrical and plumbing elements serving an improvement or a Building as distinguished from mechanical elements serving only a Unit; and with reference to any and all other matters in which all the Unit Owners have a common interest. The Association shall have all the powers and duties set forth in the Act, as well as all the powers and duties granted to or imposed on it under the By-Laws and other Condominium Documents as they may be amended from time to time. Subject to the limitations on access set forth in Section 5.4A above, the Association is specifically authorized to enter into agreements by which its powers and duties, or some of them, may be exercised or performed by some other Person or Persons. The Association shall have a reasonable right to entry upon any Unit to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Development and further, shall have the right to grant permits, license, and easements over the common areas for utilities, roads, and other purposed reasonably necessary or useful for the proper maintenance or operation of the Development. The Board shall have the authority and duty to levy and enforce the collection of general and specific Assessments for Common Expenses and is further authorized to provide adequate remedies for failure to pay such Assessments.

7.2. Name. The name of the Association shall be Devonshire Condominium Owners Association, Inc.

7.3. Members. Each Unit Owner shall be a Member of the Association as long as he is a Unit Owner. A Unit Owner's membership shall immediately terminate when he ceases to be a Unit Owner. The membership of a Unit Owner cannot be assigned or transferred in any manner except as an appurtenance to his Unit.

7.4. Voting Rights. Each Unit is entitled to one vote, which vote is not divisible. In the event a Unit is owned by one (1) Person, his right to vote shall be established by the record title to his Unit. If a Unit is owned by more than one (1) Person, the Person entitled to cast the vote for the Unit shall be designated by a certificate signed by all of the record owners of the Unit and filed with the Secretary of the Association. If a Unit is owned by a corporation, partnership, limited partnership, or limited liability company, the officer, employee or individual entitled to cast the vote for the Unit shall be designated by a certificate of appointment signed by the president or vice president and attested by the secretary or assistant secretary of the corporation (in the case of a corporation) or by the general partner or partners if more than one (in the case of a partnership or limited partnership) or the managing member if a limited liability company, which certificate shall be filed with the Secretary of the Association. If such a certificate is not on file with the Secretary of the Association for a Unit owned by more than one (1) Person or by a corporation, partnership or limited partnership, the membership or vote of the Unit concerned may be cast in accordance with the Act. Such certificate shall be valid until revoked or until superseded by a subsequent certificate or until a change in the ownership of the Unit concerned is effected. A certificate designating the Person entitled to cast the vote of a Unit may be revoked by any Unit Owner thereof.

7.5. Restraint Upon Assignment of Shares in Assets. The share of a Member in the funds and assets of the Association cannot be assigned, hypothecated, or transferred in any manner except as an appurtenance to his Unit.

7.6. Board of Directors. The affairs of the Association shall be conducted by a Board of Directors which shall consist of such number not less than three (3) nor more than five (5) as shall, from time to time, be determined and fixed by a vote of a majority of the voting rights present at any annual meeting of the Members.

7.7. Indemnification. Every Director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, or any settlement thereof, including counsel fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or officer of the Association, whether or not he is a Director or officer at the time such expenses are incurred, except in such cases wherein the Director or officer is adjudged guilty of willful misfeasance or malfeasance in the performed of his duties; provided that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled.

7.8. Limitation of Liability. Notwithstanding the liability of the Association to maintain and repair parts of the Condominium Property, the Association shall not be liable for injury or damage caused by a latent condition of the Property to be maintained and repaired by the Association nor for injury or damage caused by the elements, or other Unit Owners or Persons.

7.9. By-Laws. The Association and its Members shall be governed by the By-Laws.

7.10. Proviso. Subject to the provisions herein, until the earlier of (i) sixty (60) days after conveyance of Units comprising seventy-five percent (75%) or more of the Condominium which may be created to Unit Owners other than the Developer; (ii) two (2) years after the Developer, its successors or assigns have ceased to offer Units for sale in the ordinary course of business; or (iii) two (2) years after any Development Right to add new Units was last exercised, the By-Laws and rules adopted by the Developer shall govern and the Developer shall have the exclusive right to appoint, remove, and designate the officers and members of the Board of Directors, and neither the Unit Owners nor the Association nor the use of the Condominium Property by Unit Occupants shall interfere with the completion of the contemplated improvements and the sale of the Units. The Developer may voluntarily surrender the right to appoint and remove officers and members of the Board. Provided, however, not later than ninety (90) days after conveyance of Units comprising twenty-five percent (25%) of the Condominium which may be created to Unit Owners other than the Developer, at least one (1) member and not less than twenty-five percent (25%) of the members of the Board must be elected by Unit Owners other than the Developer. Not later than ninety (90) days after conveyance of Units comprising fifty percent (50%) of the Condominium which may be created to Unit Owners other than the Developer, not less than thirty three and one-third percent (33 1/3 %) of the members of the Board must be elected by Unit Owners other than the Developer. Except as

provided for in the Act, not later than the termination of any period of Developer control, the Unit Owners shall elect a Board of at least three (3) members, at least a majority of whom must be Unit Owners other than the Developer.

The Developer may make such use of the unsold Units and of the common areas and facilities as may facilitate such completion and sale, including but not limited to showing of the Property and the display of signs. The Developer may maintain sales offices, management offices, leasing and operation offices, and models in any Unit of the Condominium or on Common Elements in the Condominium without restriction as to the number, size, or location of said sales offices, management offices, leasing and operations offices, and models. The Developer shall be permitted to relocate said sales offices, management offices, leasing and operations offices, and models from one Unit location to another or from one area of the Common Elements to another area of the Common Elements in the Condominium. The rights of the Developer as provided for in this paragraph shall cease and terminate ten (10) years from the date of the recording of this Declaration in the Office of the Judge of Probate of Lee County, Alabama.

7.11 Management Contract. The Association may enter into such management contracts as it deems necessary to engage the services of a management company to carry out all or part of the maintenance and operational duties and obligations of the Association in accordance with this Declaration. In the event that no management contract is in effect, the maintenance duties and other obligations of the Condominium will be the responsibility of the Association.

7.12. Contracts. If entered into before the Board elected by the Unit Owners pursuant to the Act takes office, any management contract, employment contract, or lease of recreational or parking areas or facilities and any other contract or lease between the Association and the Developer may be terminated without penalty and upon not less than ninety (90) days notice to the other party by the Association at any time after the Board elected by the Unit Owners pursuant to the Act takes office.

7.13. Availability of Records. The Association shall keep financial records sufficiently detailed to enable the Association to comply with the Act. The Association shall make reasonably available in the county where the Condominium is located for examination by Unit Owners, prospective purchasers, first mortgagees and insurers of first mortgagees of any Unit, or their authorized agents, current copies of the Declaration, By-Laws, Rules and Regulations and other books, records, financial statements and the most recent annual financial statement of the Association. Reasonably available shall mean available for inspection upon request during normal business hours or under reasonable circumstances.

7.14. Reserves for Replacements. The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements and Limited Common Elements. The fund shall be maintained out of regular Assessments for Common Expenses.



## ARTICLE VIII MAINTENANCE

8.1. Maintenance by the Association. The Association is responsible for maintenance, repair, and replacements of the Common Elements and Limited Common Elements.

8.2. Maintenance by Unit Owner. Each Unit Owner is responsible for the maintenance, repair, and replacement of his Unit and all personal property located within the Unit or Limited Common Elements.

8.3. Addition, Alteration and Improvement of the Common Elements. Except as may be prohibited by the Act, and except as to the Development Rights and Special Declarant Rights provided for in this Declaration, after the completion of the improvements included in the Common Elements or Limited Common Elements which are contemplated by this Declaration, there shall be no addition, alteration, change, or further improvement of Common Elements or Limited Common Elements without prior approval of the Association.

8.4. Unit Owner's Covenants. Each Unit Owner covenants and agrees as follows:

A. To perform all maintenance, repairs and replacements that are the Unit Owners' obligations under this Declaration and the Act.

B. To pay for all the Unit Owner's utilities, including water and sewer (not provided by a meter serving more than one Unit), electricity, and telephone used within the Unit and all taxes levied against the Unit Owner's Unit.

C. Not to make, or cause to be made, any repairs, to any plumbing, heating, ventilation or air conditioning systems located outside the Unit Owner's Unit but required to be maintained by the Unit Owner pursuant to the provisions hereof, except by licensed plumbers or electricians authorized to do such work by the Association or its agent.

D. Not to make any addition or alteration to a Unit or to the Common Elements or to the Limited Common Elements or to do any Act that would impair the structural soundness or safety of any part of the Condominium Property. Structural alterations within a Unit may be made only with the written consent of the Association. Any machinery or equipment constructed or installed within any of the Limited Common Elements of a Unit may be modified, altered, replaced and changed without any requirement that the Association consent to the same.

E. Except as otherwise provided in Paragraph 8.4D hereof, to make no alterations, additions, improvements, repairs, replacements, or changes to the Common Elements or the Limited Common Elements or to any outside or exterior portion of the Building without the prior written consent of the Association. If consent is granted, the Unit Owner shall use only a licensed contractor who shall comply with the Rules and Regulations with respect to the work which may be adopted by the Association. 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 or by the subcontractor or employees of such contractor, whether said damages are caused by negligence, accident or otherwise.

F. To allow the Association, its delegates, agents, or employees at all reasonable times to enter into any Unit or Limited Common Element for the purpose of maintaining, inspecting, repairing, or replacing Common Elements or Limited Common Elements or for repairing, maintaining or replacing any plumbing, heating, ventilation or air conditioning system located within such Unit but serving other parts of the Condominium Property; or to determine, in case of emergency, the circumstances threatening Units or Common Elements or Limited Common Elements and to correct the same; or, to determine compliance with the provisions of the Condominium Documents.

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

H. To reimburse the Association for any repairs or replacements which are made necessary because of abuse or negligent use by a Unit Owner of the Condominium Property, the costs of such repair or replacement may be assessed against such Unit Owner.

I. To comply with all of the obligations of a Unit Owner under the Act.

8.5 Contracts for Maintenance. The Association may enter into a contract with any firm, Person or corporation, or may join with other entities in contracting for the maintenance and repair of the Condominium Property, and may delegate to such agent all or any portion of the powers and duties of the Association, except such as are specifically required by the Condominium Documents to have the approval of the Members of the Association.

8.6 Exterior Surface. The Association shall determine the exterior color scheme of the Condominium Property and shall be responsible for the maintenance thereof, except as may be otherwise provided for herein. No Unit Owner shall paint any exterior surface or, add or replace any thing thereon or affix thereto without the written consent of the Association.

## **ARTICLE IX INSURANCE**

9.1. Purchase of Insurance. Commencing not later than the time of the first conveyance of a Unit to a Person other than the Developer, the Association shall maintain insurance upon the Condominium Property to the extent reasonably available as provided for in the Act and as follows.

9.2. Purchase of Policies. The Association shall retain the original of all insurance policies in a place of safe keeping such as a safe or a safety deposit box.

9.3. Copies to Mortgagees. One copy of each insurance policy and of all endorsements thereto shall be furnished by the Association to any first Mortgagee requesting a copy.

9.4. Authorization to do Business. All policies of insurance must be issued by companies specifically authorized by the laws of the State of Alabama to transact such business.

9.5. Coverage. The Association is required to maintain the following insurance coverage:

A. Property and Casualty. The Association must obtain, maintain and pay the premiums upon, as a Common Expense, the property insurance required by the Act and as follows. The type of policy shall be a "master" or "blanket" type policy of property insurance covering all of the Common Elements and Limited Common Elements (except land, excavation, and other items usually excluded from coverage) including fixtures to the extent they are part of the Common Elements and Limited Common Elements of the Condominium Property, building service equipment and supplies and other personal property belonging to the Association. All references herein to a "master" or "blanket" type of policy of property insurance are intended to denote single entry Condominium insurance coverage. The policy shall be in an amount deemed appropriate by the Association but not less than the greater of eighty percent (80%) of the Actual cash value of the insured Property at the time the insurance is purchased or such greater percentage of such Actual cash value as may be necessary to prevent the applicability of any coinsurance provision at any renewal date, exclusive of land, excavation, foundation, and other items normally excluded from property policies. The policy shall include an "Agreed Amount Endorsement" or its equivalent and, if available, an "Inflation Guard Endorsement." If there shall be a construction code provision that requires changes to undamaged portions of the Condominium Property even when only part of the project is destroyed by an insured hazard, the policies shall include construction code endorsements. The property insurance policy shall provide, as a minimum coverage and protection against:

(1) Loss or damage by fire and all other hazards that are normally covered by the standard extended coverage endorsement.

(2) All other perils which are customarily covered with respect to condominiums similar in construction shall be obtained so as to meet the requirements of the Act.

B. Liability Insurance. The Association must obtain, maintain and pay the premiums upon, as a Common Expense, a comprehensive general liability insurance policy, including medical payments insurance, as required by the Act and covering all the Common Elements, commercial space owned and leased by the Association, and public ways of the Condominium. Coverage limits shall be in amounts generally required by private institutional mortgage investors for projects similar in construction, location and use. However, such coverage shall be, if reasonably available, for at least one million dollars (\$1,000,000.00) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under this policy shall include, if reasonably available, without limitation, legal liability of the insured for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements, and legal liability arising out of law suits related to employment contracts and, if applicable, elevator collision and garage keepers liability. If required by any first mortgage holder, and if reasonably available, the policy shall include protection against such other risks as are customarily covered with respect to Condominiums similar in construction, location and use, including but not limited to host

liquor liability, employers liability insurance, contractual and all written contract insurance and comprehensive automobile liability insurance.

C. Flood Insurance. If any part of the Condominium Property shall be deemed to be in a special flood hazard area, as defined by the Federal Emergency Management Agency or other governmental agency, the Association shall, if reasonably available, obtain, maintain, and pay the premiums upon, as a Common Expense, a "master" or "blanket" type of flood insurance policy. The policy shall cover the Common Elements falling within the designated flood hazard area. The insurance shall be in an amount deemed appropriate by the Association, but not less than an amount equal to the lesser of:

(1) Eighty percent (80%) of the actual cash value of the insured property located within the flood hazard area; or

(2) The maximum coverage available for the Property under the National Flood Insurance Program. The policy shall be in a form which meets the criterion set forth in the most current guidelines issued on the subject by the Federal Government.

D. Personnel Coverages. Should the Association employ personnel, all coverages required by law, including workman's compensation, shall be obtained so as to meet the requirements of the law.

E. Fidelity Bonds. The Association, if reasonably available, shall obtain, maintain and pay the premiums upon, as a Common Expense, a fidelity bond to protect against loss of money by dishonest Acts on the parts of all officers, directors and employees of the Association and all other persons handling, or responsible for, funds of the Association or funds administered by the Association. Where a management agent has the responsibility for handling or administering funds of the Association, the management agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. The fidelity bond shall name the Association as the obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond. However, in no event may the aggregate amount of such bonds be less than one hundred and fifty percent (150%) of the estimated annual Common Expenses. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of the "employees," or similar terms or expressions. The premiums on all bonds required herein to be maintained by the management agent shall be paid by the management agent. The bond shall provide that any first Mortgagee shall receive notice of cancellation or modification of the bond.

F. Other Insurance. The Association shall obtain other insurance required by the Act and shall have authority to obtain such other insurance as it deems desirable, in such amounts, from such sources and in such forms as it deems desirable. The premiums for such insurance shall be a Common Expense.

If the Insurance described above which is required to be maintained is not reasonably available, the Association promptly shall give notice of that fact to be hand delivered or sent prepaid by United States Mail to all Unit Owners.

9.6. Individual Insurance. Nothing contained herein shall be construed to prevent a Unit Owner from obtaining insurance for his own benefit.

9.7. Provisions. Insurance coverage, if reasonably available, must comply with the requirements of the Act and this Declaration and shall in substance and effect:

A. Provide that the policy shall be primary, even if the Unit Owner has other insurance that covers that same loss, and further provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not claim any right of set-off, counterclaim, apportionment, pro-ratio or contribution by reason of any other insurance obtained by or for any Unit Owner.

B. Contain no provision relieving the insurer from liability for a loss occurring because the hazard to such Building is increased, whether or not within the knowledge or control of the Association, or because of any breach of warranty or condition or any other Act or neglect by the Association or any Unit Owner or any other Persons under either of them.

C. Provide that such policy may not be canceled or substantially modified and the insurer may not refuse to renew said policy (whether or not requested by the Association) except by the insurer giving at least thirty (30) days prior written notice thereof to the Association, the Unit Owner, each holder of a first mortgage on an individual Unit, and every other Person in interest who shall have requested such notice of the insurer.

D. Contain a waiver by the insurer of any right of subrogation to any right of the Association, or either against the Unit Owner or lessee of any Unit.

E. Contain a standard Mortgagee clause which shall:

(1) Provide that any reference to a Mortgagee in such policy shall mean and include all holders of mortgages of any Unit, whether or not named herein; and

(2) Provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any Act or neglect of the Association or Unit Owners or any Persons under any of them; and

(3) Waive any provisions invalidating such Mortgage clause by reason of the failure of the Mortgagee to notify the insurer of any hazardous use or conveyance, any requirement that the Mortgagee pay any premium thereon, and any contribution clause.

F. Contain a "severability of interest" endorsement which would preclude the insurer from denying liability for any loss occurring because of any Act of negligence by the Association, any Unit Owner or any Occupant of a Unit;

G. Provide that the coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by Unit Owners or their Mortgages;

H. Provide that Developer, so long as Developer shall own any Unit, shall be protected by all Association insurance policies as an Owner; and

I. Be written by reputable companies licensed to do business in the State of Alabama and holding a rating of A+ or better in the financial category as established by A.M. Best's Insurance Reports and, if not available, the best possible or equivalent rating.

9.8. Liabilities and Responsibilities of Unit Owner. A Unit Owner shall be liable for any claim, damage, or judgment entered as a result of the use or operation of his Unit caused by his conduct. Each Unit Owner shall be responsible for obtaining insurance for his own benefit.

9.9. Insurance Premiums. Insurance premiums for policies maintained by the Association shall be paid by the Association as a Common Expense.

9.10. Insurance Trustee: Share of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their Mortgagees as their interest may appear, and shall provide that all proceeds covering Property losses shall be paid to the Association, as Insurance Trustee for each of the Unit Owners in the percentages as established by the Declaration, which said Association, for the purpose of these provisions, is herein referred to as the Insurance Trustee. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the same in trust for the purpose elsewhere stated herein and for the benefit of the Unit Owners and their Mortgagees. The Insurance Trustee shall have the power to adjust all claims arising under insurance policies purchased by the Association; to bring suit thereon in its name and/or in the name of other insured; to deliver releases on payment of claims; to compromise and settle such claims; and otherwise to exercise all the rights, powers, and privileges of the Association and each Unit Owner and any other holder of an insured interest in the Condominium Property under such insurance policies, however, the Actions of the Insurance Trustee shall be subject to the approval of any first Mortgagee if the claim shall involve more than one Unit, and only if one Unit is involved, such Actions shall be subject to approval of any first Mortgagee holding a mortgage and encumbering such Unit.

9.11. Shares of Proceeds. The Association as Insurance Trustee shall receive such insurance proceeds as are paid to it and shall hold the same in trust for the purposes stated herein and for the benefit of the Unit Owners and their Mortgagees in the following shares:

A. Common Elements. An undivided share of the proceeds on account of damage to Common Elements shall be held for each Unit Owner, which such share's portion of the total proceeds being the same percentage as the share of the Common Elements appurtenant to his Unit.

B. Units and Limited Common Elements. Except as provided elsewhere in this Declaration,

(1) When the Condominium Property is to be restored, the proceeds shall be held for the Unit Owners of damaged Units and damaged Limited Common Elements, with the share of each in the total proceeds being in the proportion that the cost of repairing the damage suffered by such Unit Owner bears to the total cost of repair, which cost shall be determined by the Board.

(2) When the Condominium Property is not to be restored, the proceeds shall be held for the Unit Owners in the undivided shares that are the same as their respective shares in the Common Elements.

C. Mortgages. In the event a Mortgagee endorsement has been issued with respect to a Unit, the share of the owner of that Unit shall be held in trust for the Mortgagee and the Unit Owner as their interest may appear; provided, however, that no Mortgagee shall have any right to determine or participate in the determination of whether or not any damaged Property shall be reconstructed or repaired except as may be specifically provided to the contrary elsewhere in this Declaration.

9.12. Distribution of Proceeds. Proceeds of insurance policies received by the Association as Insurance Trustee shall be distributed to or for the benefit of the beneficial Unit Owners:

A. Reconstruction or Repair. First, if the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Unit Owners, with remittances to Unit Owners and Mortgagees being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by any such Mortgagee.

B. Failure to Repair. If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial Unit Owners with remittances to Unit Owners and their Mortgagee being payable jointly to them. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by any such Mortgagee.

## ARTICLE X RECONSTRUCTION OR REPAIR AFTER CASUALTY

10.1. Determination to Reconstruct or Repair. Any portion of the Condominium for which insurance is required under this Declaration which is damaged or destroyed must be repaired or replaced promptly by the Association unless:

- A. The Condominium is terminated in accordance with the Act.
- B. Repair or replacement would be illegal under any state or local statute or ordinance covering health or safety; or
- C. Eighty percent (80%) in interest of all Unit Owners vote not to rebuild. The cost of repair or replacement of a Common Element in excess of insurance proceeds in reserves is a Common Expense as provided in this Declaration.

10.2. Plans. Any reconstruction or repair must be substantially in accordance with the Act and in substantial accordance with the Plans for the original improvements or as the Condominium Property was last constructed; or if not, then according to Plans approved by the Board of Directors of the Association.

10.3. Responsibility. If the damage is only to those parts of a Unit or Limited Common Elements for which the responsibility of maintenance and repair is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

10.4. Estimate of Cost. Immediately after a casualty causing damage to the Condominium Property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

10.5. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair of the Unit and Limited Common Elements by the Association, Assessments shall be made against the Unit Owners who own the damaged Property or have the exclusive right to use the Limited Common Element attached to his Unit, and against all Unit Owners in the case of damage to common areas and facilities, in sufficient amounts to provide funds to pay the estimated costs. If any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, Assessments shall be made against the Unit Owners who own the damaged Unit and have exclusive right to use the Limited Common Elements attached to his Unit, and against all Unit Owners in the case of damage to common areas and facilities in sufficient amounts to provide funds for the payment of such costs. Such Assessments against Unit Owners for reconstruction and/or repair of damage to Units and Limited Common Elements shall be in proportion to the costs of reconstruction and/or repair of damage to common areas and facilities shall be in proportion to the Unit Owners' share in the Common Elements. Assessments for reconstruction and repair may be collected, and the collection enforced, in the same manner as provided for Assessments elsewhere herein.

10.6. Construction Funds. The funds for payment of costs of reconstruction and repair after casualty for which the Association is responsible, which shall consist of proceeds of insurance held by the Association as Insurance Trustee and funds collected by the Association from Assessment against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner and order:



A. Disbursement. The construction fund shall be disbursed in payment of such costs on the order and in the manner provided by the Board of the Association.

B. Unit Owner. If there is a balance of insurance proceeds after the payment of the costs of reconstruction and repair that are the responsibility of the Association, this balance shall be distributed to Unit Owners of damaged Units or damaged Limited Common Elements who are responsible for the reconstruction and repair of the damaged portions of their Units or Limited Common Elements. The distribution to each Unit Owner shall be made in the proportion that the estimated costs of reconstruction and repair of such damage to his Unit or Limited Common Element bears to the total of such estimated costs in all damaged Units and Limited Common Elements. However, no Unit Owner shall be paid an amount in excess of such estimated cost for his Unit or Limited Common Element. If there is a first Mortgagee, the distribution shall be paid to the Unit Owner and to the first Mortgagee jointly.

C. Surplus. It shall be presumed that the first moneys distributed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund.

## **ARTICLE XI EMINENT DOMAIN**

11.1. Proceeds. The taking of a portion of a Unit or of the Common Elements by eminent domain shall be deemed, for purposes of determining use of proceeds, to be a casualty and the determination as to whether the Condominium will be reconstructed or repaired or continued after condemnation will be determined in the manner provided for in the Act and under the Article Reconstruction or Repair After Casualty of this Declaration, and the awards for such taking shall be deemed proceeds from insurance on account of the casualty and shall be deposited with the Association as Insurance Trustee. Even though the awards may be payable to a Unit Owner, the Unit Owner shall deposit the awards with the Association as Insurance Trustee; and in the event of failure to do so, in the discretion of the Board of Directors of the Association as Assessment shall be made against a defaulting Unit Owner in the amount of his award, or the amount of such award shall be set off the sums hereafter made payable to such Unit Owner.

11.2. Disbursement of Funds. If the Condominium is terminated after condemnation, the proceeds of the condemnation awards for disbursement purposes will be deemed to be insurance proceeds and shall be owned and distributed in the manner provided in this Declaration for the distribution of insurance proceeds if the Condominium is terminated after damage to the Common Elements. If the Condominium is not terminated after condemnation, the size of the Condominium Property will be reduced and the Property damaged by the taking will be made usable in the manner provided by the Act and as provided below. The proceeds of such award shall be used for these purposes and shall be disbursed in the manner provided for disbursement of funds by the Association after damage to the Common Elements.

11.3. Unit Reduced but Habitable. If the taking reduces the size of a Unit and the remaining portion of the Unit can be made habitable, the award for the taking of 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:

A. Restoration of Unit. The Unit shall be made habitable. If the cost of the restoration exceeds the amount of the award, and the Owner of the Unit does not within a reasonable period of time provide the additional funds required for restoration, such additional funds may, in the discretion of the Board of Directors, be extended for restoration by the Association and be assessed against the Unit Owner as an Assessment.

B. Distribution of Surplus. The balance of the award, if any, shall be distributed to the owner of the Unit and to any first Mortgagee of a Unit, the remittance being made payable jointly to the Unit Owner and any such first Mortgagee.

C. Adjustment of Shares in Common Elements. If the floor area of the Unit is reduced by the taking, the percentage representing the share in the Common Elements, the Common Expenses and the Common Surplus appertaining to the Unit shall be reduced in accordance with the Act.

11.4. Unit Made Uninhabitable. If the taking is of the entire Unit, or so reduces the size of the Unit that it cannot be used practically or lawfully for any purpose permitted by the Declaration, 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.

A. Payment of Award. The award shall be paid first to any first Mortgagee in an amount sufficient to pay off its mortgage on such Unit; and then jointly to the Unit Owner and other Mortgagees of the Unit in an amount not to exceed the market value of the Condominium parcel immediately prior to the taking as diminished by any sums from the award previously reserved for any first Mortgagee; and the balance, if any, to the repairing and replacing of the Common Elements damaged by the taking.

B. Addition to Common Elements. The remaining portion of the Unit, if any, shall become part of the Common Elements and shall be placed in condition for use by all of the Unit Owners in the manner approved by the Board of Directors; provided that if the cost of the work shall exceed the balance of the fund from the award for the taking, the work shall be approved in the manner elsewhere required in this Declaration for further improvement of the Common Elements.

C. Adjustment of Shares in Common Elements, Common Expenses, and Common Surplus. The shares in the Common Elements, the Common Expenses, and the Common Surplus appurtenant to the Units that continue as part of the Condominium shall be adjusted to distribute the ownership of the other shares among the reduced number of Unit Owners. This adjustment shall be done by restating said share of the continuing Unit Owners as percentages aggregating one hundred percent (100%) so that the shares appurtenant to the Unit of the continuing Owners shall be in the same proportions to each other as before the adjustment.

D. Assessments. If the balance of the award (after payments to the Unit Owner and such Unit Owners' Mortgagees as above provided) for the taking is not sufficient to finance the alteration of the remaining portion of the Unit for use as part of the Common Elements, the additional funds required for such purposes shall be raised by Assessments against all the Unit Owners who will continue as owners of Units after the changes in the Condominium effected by the taking. Such Assessments shall be made in proportion to the shares of those Unit Owners in the Common Elements after the changes effected by the taking.

E. Arbitration. If the market value of a Condominium parcel prior to the taking cannot be determined by agreement between the Unit Owners, Mortgagees of the Unit, and the Association within thirty (30) days after notice by either party, the value shall be determined by arbitration in accordance with the then existing rules of the American Arbitration Association, except that arbitrators shall be two appraisers appointed by the American Arbitration Association who shall base their determination on an average of their appraisals of the Condominium parcels; and a judgment of specific performance on the decision rendered by the arbitrators may be entered into any court of competent jurisdiction. The cost of arbitration proceedings shall be assessed against all Unit Owners prior to the taking in proportion to the shares of the Unit Owners in the Common Elements as they exist prior to the changes effected by the taking.

11.5. Taking of Common Elements. Awards for the taking of Common Elements shall be used to make the remaining portion of the Common Elements usable in the manner approved by the Board of Directors; provided that if the cost of the work shall exceed the balance of the funds from the awards for the taking, the work shall be approved in the manner required elsewhere in this Declaration for further improvement of the Common Elements. The balance of the awards for the taking of the Common Elements, after adjustment of these shares on account of the condemnation, except that if a Condominium parcel is encumbered by a first mortgage, the distribution shall be paid jointly to the Unit Owner and the first Mortgagee of the Condominium parcel.

11.6. Conflict with Act. If there is any conflict with the provisions of this article and the Act, the provisions of the Act shall control.

## **ARTICLE XII**

### **USE RESTRICTIONS**

The use of the Condominium Property shall be in accordance with the following provisions as long as the Condominium exists:

12.1 Subdivision of Units. No Unit may be divided or subdivided into a smaller Unit, without the prior written consent of the ARC and/or the Association; provided however that Developer reserves the right to alter the boundaries between Units and to increase or decrease the number of Units so long as the Developer owns the Units so altered. Any change in the boundaries between the Units shall be reflected by recording an amendment to this Declaration and a revision to the condominium plat.

12.2 Common Elements. The Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the personal use of the Owners, their guests and lessees and other authorized occupants of Units. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on the Common Elements nor shall anything be constructed on or planted in or removed from the Common Elements, nor shall the Common Elements in any other way be altered without the prior written consent of the Association.

12.3 Nuisance. No nuisance shall be allowed upon the Condominium Property or within a Unit, nor any use or practice that is the source of annoyance to Owners or which interferes with the peaceful possession and proper use of the Condominium Property by the Owners. All parts of the Condominium shall be kept in a clean and sanitary condition, and no rubbish, refuse or garbage shall be allowed to accumulate nor any fire hazard allowed to exist.

12.4 Lawful Use. No immoral, improper, offensive or unlawful use shall be made of the Condominium Property or a Unit, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed. The responsibility of meeting the requirements of governmental bodies for maintenance, modification or repair of the Condominium Property or a Unit shall be the same as the responsibility for the maintenance and repair of the property concerned.

12.5 Signs. No signs or advertising posters of any kind shall be maintained or permitted on any portion of any Unit, without the express written permission of the Association; provided however, that the Developer (and entities affiliated with the Developer or employed by the Developer to market the Units) may display such signs as it deems necessary and appropriate to promote the development of the Condominium Property and sales of Units, and provided further that one "for rent" or "for sale" sign may be placed on the Unit without permission from the Association.

12.6 Condominium Rules and Regulations. Reasonable rules and regulations concerning the use of Condominium Property may be promulgated and amended from time to time by the Board of Directors of the Association in the manner provided by its Articles of Incorporation and Bylaws.

12.7 Developer's Use. The Developer, its agents or an entity affiliated with the Developer may make such use of the Common Elements and the Units as may facilitate the sale or rental of Units, including, without limitation, showing of the property, maintaining a sales office within a Unit, maintaining a model Unit, and the display of signs and other promotional devices.

12.8 Antennas. No satellite dishes shall be allowed on any Unit more than two (2) feet in diameter or projecting higher than ten (10) feet above the roof line. The satellite dish must not be visible from any street within the Condominium, and the location of such satellite dish must be approved by the ARC. No radio antenna, radio receiver or other similar device or aerial shall be attached to or installed on any Unit or dwelling unless the same is (i) contained entirely within the interior of a building or other structure, (ii) not visible from any street within the Condominium or adjacent Unit or dwelling, and (iii) approved by the ARC. No radio or television signals or other

form of electromagnetic radiation or transmission shall be permitted to originate from any Unit or dwelling which may interfere with the reception of radio or television signals within the Condominium or any other real property situated in close proximity to the Condominium.

12.9 Exterior Lighting. No exterior lighting, including, without limitation, free standing lighting and utility (e.g., flood) lights may be attached to a Unit, Common Element or Limited Common Element without the prior written consent of the Association.

12.10 No Alterations. No alterations or additions may be made any Unit, Common Element or Limited Common Element without the prior written consent of the Association.

12.11 Garages. Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the prior written consent of the Association.

12.12 Windows, Window Treatments and Doors. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments. Reflective glass shall not be permitted on the exterior of any dwelling. No foil or other reflective materials shall be installed on any windows or used for sun screens, blinds, shades or other purposes. The Association may adopt guidelines for the types of window treatments that are allowed.

12.13 Outdoor Furniture and Patio Accessories.

(a) No furniture, planters or other yard and garden accessories shall be placed, kept, installed, maintained, or located on any Common Element. Any such item placed, kept, installed, maintained, or located on any Unit or Limited Common Elements shall be properly maintained and replaced when worn.

(b) No children's toys, swing sets, basketball goals and other outdoor and recreational equipment and appurtenances shall be allowed to be placed, kept, maintained or located on any Unit, Common Element or Limited Common Element without the prior written consent of the Association.

(c) Barbecue grills or other types of outdoor cooking equipment and apparatus may be located within a Unit or on the Limited Common Element, but shall be prohibited from use within the Common Elements without express written permission of the Association.

12.14 Pets and Animals. No animals, livestock, birds, or poultry of any kind shall be kept, raised, or bred by any Owner upon any Unit or other portion of the Condominium; provided, however, that not more than three (3) dogs or cats (or a combination thereof not to exceed three (3) in number) may be kept and maintained on a Unit so long as they are not kept for breeding or commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. All such structures or areas for the care, housing, or confinement of any pet shall be located at the rear of the Unit, shall not be visible from any street, and shall be constructed of

materials and of a size approved by the Association. Dogs and cats shall not be allowed to roam unattended within the Condominium. The Association shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Condominium, including the right to assess fines for violations of such rules and regulations.

12.15 Trash, Rubbish, and Nuisances. Trash, garbage, and any other refuse or waste shall not be kept on any Unit except in sanitary containers or garbage compactor units. Trash cans and containers shall at all times be kept at the rear of or inside the Unit and shall be screened from view from streets and adjacent Units; provided, however, that trash cans and containers can be moved to the front or side yard of any Dwelling on trash collection days for such Unit.

12.16 Recreational Vehicles and Machinery and Equipment. Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, motorized carts and all-terrain vehicles, lawn mowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery, or equipment shall not be permitted stored or allowed to remain on any Unit unless the same is placed, stored, and maintained within the garage of such Unit.

12.17 Signage. No signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any unit or elsewhere on any portion of the Condominium Property without the express written permission of the Association. The approval of any signs and posters, including, without limitation, political campaign signs and name and address signs, shall be upon such conditions as may be determined by the Board of Directors.

#### 12.18 Golf Course Protection.

(a) Owners and Occupants, as well as their family members, guests, agents and invitees shall be obligated to refrain from any actions or activities which would detract from the playing qualities on the Golf Course, distract golfers, or which would create a nuisance. Such prohibited activities shall include, without limitation, burning materials where the smoke would cross the Golf Course, maintenance of dogs or other pets which would interfere with Golf Course play due to their loud barking or odors, entrance onto the Golf Course property, passage over and along the golf cart pathways, playing of loud radios, televisions, stereos or musical instruments, running or walking on the fairways, picking up golf balls or similar interference with play or allowing unsightly trash, rubbish, weeds or undergrowth to remain or grow on any Unit.

(b) Owner and Occupants, together with their respective family members, guests, agents and invitees, do, by acceptance of a deed to such Unit or by their entrance onto such Unit, hereby waive and release Developer, its employees, golf course employees, the ARC, shareholders, members and partners, from any and all liability of any nature whatsoever arising out of or in connection with any damage or injury (including death) to their person or property caused by any golf balls entering onto such Unit and/or the Improvements constructed thereon.

(c) No landscaping or plantings which would interrupt or interfere with the natural flow of the visual and actual play of the Golf Course shall be permitted. No trees located within fifty

(50) feet of the boundary between the Golf Course property and any lot within this subdivision shall be cut, mutilated, or destroyed without the express written approval of the ARC.

12.19 Compliance with Governmental Regulations. Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements, and code provisions of the Governmental Authorities.

### **ARTICLE XIII**

#### **ALIENABILITY OF UNITS**

13.1. No Alienability Restrictions. The right of an Owner to sell, transfer, assign or hypothecate his Unit shall not be subject to the approval of the Association. Accordingly, a proper transfer or conveyance of such Unit shall not require the written approval of the Association.

13.2 Leasing and Rental. Owners may lease or rent their Units for non-transient occupancy.

### **ARTICLE XIV**

#### **COMPLIANCE AND DEFAULT**

14.1 Compliance and Default. Each Owner shall be governed by and shall comply with the terms of the Condominium Documents and the Condominium Rules and Regulations adopted pursuant to those documents and as they may be amended from time to time. Failure of an Owner to comply with the provisions of such documents and regulations shall entitle the Association or other Owners to pursue any and all legal and equitable remedies for the enforcement of such provisions, including, but not limited to, an action for damages, an action for injunctive relief or an action for declaratory judgment. Failure of the Association to comply with the provisions of the Condominium Documents and the Condominium Rules and Regulations adopted pursuant to those documents as they may be amended from time to time shall entitle the Owners to pursue any and all legal and equitable remedies for the enforcement of such provisions, including, but not limited to, an action for damages, an action for injunctive relief or an action for declaratory judgment. All provisions of this Declaration shall be enforceable equitable servitudes and shall run with the land and shall be effective until the Condominium is terminated.

14.2 Costs and Attorney's Fees. In any proceeding arising because of an alleged failure of an Owner or the Association to comply with the terms of the Condominium Documents or the Condominium Rules and Regulations adopted pursuant to them as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and recover such reasonable attorney fees incurred therein, including all appeals and all proceedings in bankruptcy.

14.3 No Waiver of Rights. The failure of the Association or any Owner to enforce any covenant, restriction or other provision of the Condominium Act), the Condominium Documents or the Condominium Rules and Regulations shall not constitute a waiver of the right to do so thereafter.

14.4 Injunctive Relief. The Association may seek an injunction from a court of equity to compel or prohibit compliance or violation of the Condominium Documents regardless of whether an adequate remedy at law exists.

14.5 Governing Law: Waiver of Jury Trial: Venue of Actions. This Declaration shall be governed by, and shall be construed in accordance with, the laws of the State of Alabama, as the same may exist on the date of recording hereof. The Association, an Owner or Owners, the Developer, the Management Company and any other party claiming rights or obligations by, through or under this Declaration, or two or more of the foregoing, each hereby waive any right they may have under any applicable law to a trial by jury with respect to any suit or legal action which may be commenced by or against the others concerning the interpretation, construction, validity, enforcement or performance of this Declaration or any other agreement or instrument executed in connection with this Declaration. In the event any such suit or legal action is commenced by any party, the other parties hereby agree, consent and submit to the personal jurisdiction of the circuit court for the county in which the Condominium is situated, with respect to such suit or legal action, and each party also hereby consents and submits to and agrees that venue in any such suit or legal action is proper in said court and county, and each party hereby waives any and all personal rights under applicable law or in equity to object to the subject matter or personal jurisdiction and venue in said court and county. Such jurisdiction and venue shall be exclusive of any other jurisdiction and venue.

## **ARTICLE XV** **AMENDMENTS**

15.1 By Owners. Except as otherwise provided herein, this Declaration may be amended in the following manner:

(a) Notice. Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered.

(b) Resolution. A resolution for the adoption of a proposed amendment shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered.

(c) Adoption. A resolution amending the Declaration shall be adopted in the following manner:

(1) Board of Directors. Until the first election of a majority of the directors of the Association by Owners other than the Developer, proposal of any amendment and approval thereof shall require only the affirmative action of two-thirds (2/3) of the entire membership of the Board of Directors of the Association, and no meeting of the Owners nor any approval thereof need be had. However, no amendment may, unless specifically approved as provided in Section 15.1(c)(2) or below:



a. materially alter or modify the appurtenances to the Unit, including voting rights, rights to use Common Elements, interests in Common Elements or the leasing of Units;

b. materially amend any provision regulating assessments, assessment liens or subordination of liens;

c. materially amend any provision regarding reserves for maintenance, repair and replacement of the Common Elements;

d. materially amend any provision regarding insurance or fidelity bonds;

e. materially amend any provision regarding the responsibility for maintenance and repair of the Condominium;

f. impose any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey a Unit;

g. which address the convertibility of Units into Common Element or Common Elements into Units; or

h. which changes the proportion or percentage by which an Owner shares the Common Expenses and owns the Common Surplus.

(2) Board of Directors and Owners. In addition to the procedure set forth above and after the first election of a majority of the directors of the Association by Owners other than the Developer, a resolution for the adoption of a proposed amendment may be proposed by the Board of Directors of the Association or by the Owners. Owners may propose such an amendment by instrument in writing directed to the president or secretary of the Board signed by not less than holders of thirty-three percent (33%) of all of the votes of the Association. Amendments may be proposed by the Board of Directors by action of a majority of the Board at any regularly constituted meeting thereof. Upon an amendment being proposed as herein provided, the president or, in the event of his refusal or failure to act, the Board of Directors, shall call a meeting of the Owners to be held not sooner than fifteen (15) days nor later than sixty (60) days thereafter for the purpose of considering said amendment. Directors and Owners not present at the meeting considering the amendment may express their approval in writing, provided such approval is delivered by the secretary at or prior to the meeting. Except as provided herein, such approvals must be by:

a. not less than sixty-seven percent (67%) of the entire membership of the Board of Directors and not less than sixty-seven percent (67%) of the votes of the Association; or

b. an agreement signed and acknowledged by all Owners in the manner required for the execution of a deed; and

(3) Any amendment listed under Section 15.1(c)(1) requires the consent of those Mortgagees providing notice to the Association under Section 15.3 below. Any amendment which would adversely affect Mortgagees must have the prior written consent of Mortgagees holding a first mortgage on Units to which at least fifty-one percent (51%) of the votes of the Association appertain and the prior written consent of Owners representing not less than sixty-seven percent (67%) of all of the votes of the Association.

(d) Execution and Recording. Each amendment shall be attached to or shall contain a certificate certifying that the amendment was duly adopted, and the certificate shall be executed by the president of the Association and attested by the secretary with the formalities of a deed, and said amendment shall be effective upon recordation of the amendment and certificate in the Office of the Judge of Probate of Lee County, Alabama.

15.2 By the Developer. The Developer reserves the right at any time, so long as it owns any of the Units in the Condominium, to unilaterally amend this Declaration as it may deem appropriate, in its sole discretion, to carry out the purposes of the project, or as may be required by any lending institution, FHA, VA, FHLMC, FNMA, title insurance company or public body or as may be necessary to conform the same to the requirements of law or to facilitate the operation and management of the Condominium or the sale of Units in an FHA/VA approved condominium. Any amendments to this Declaration which may be unilaterally made by the Developer shall become effective upon the recording in the Office of the Judge of Probate of Lee County, Alabama, of an instrument executed solely by the Developer, setting forth the text of such amendment in full, together with the appropriate recording data of this Declaration.

No amendment to this Declaration unilaterally made by the Developer shall be permitted if such amendment would: (i) change the configuration, boundaries or size of any Unit in any material fashion; (ii) materially alter or modify the appurtenances to any Unit, including voting rights, rights to use Common Elements, interests in the Common Elements or the leasing of Units; (iii) which materially changes the proportion or percentage by which the Owners share the Common Expenses and own the Common Surplus; (iv) which materially amend any provision contained within this Declaration, the Association Articles or Bylaws regulating assessments, assessment liens or the subordination of liens, reserves for maintenance, repair or replacement of Common Elements; (v) which materially modifies the responsibility for maintenance and repair of the Condominium Property; (vi) which materially modifies the provisions regarding expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium; (vii) which addresses the convertibility of Units into Common Elements or Common Elements into Units; (viii) which imposes any right of first refusal or similar restrictions on the right to transfer or otherwise convey a Unit; (ix) which establishes self-management by the Association where professional management has been required by any Mortgagee; or (x) which materially amends any provision in this Declaration regarding insurance or fidelity bonds.

15.3 Notice to Mortgagees. Any Mortgagee, upon written request to the Association (such request to state the name and address of such Mortgagee and the Unit number at issue), will be entitled to timely written notice of any proposed amendment to this Declaration affecting a change in the boundaries of any Unit or the exclusive easement rights appertaining thereto, the interest in the Common Elements appertaining to any Unit or the liability for Common Expenses appertaining thereto, the number of votes in the Association appertaining to any Unit or the purposes to which any Unit or the purposes to which any Unit or the Common Elements are restricted.

## **ARTICLE XVI** **TERMINATION**

The Condominium may be terminated in the following manners, in addition to the manner provided by the Condominium Act:

16.1. Agreement. The Condominium may be terminated at any time upon prior notification to the Division by the approval in writing of all Owners and all Mortgagees of record. Notice of a meeting at which the proposed termination is to be considered shall be given not less than thirty (30) days prior to the date of such meeting.

16.2. Termination Through Condemnation. The Condominium shall only be terminated by virtue of a condemnation action if all Condominium Property is taken in condemnation. If less than all of the Condominium Property is taken in condemnation, the Condominium shall continue as to those portions of the Condominium Property not so taken.

16.3. Certificate. Termination of the Condominium in either of the foregoing manners shall be evidenced by a certificate of the Association executed by its president and secretary certifying to the facts effecting the termination, said certificate to become effective upon being recorded in the Public Records of Lee County, Alabama.

16.4 Shares of Owners after Termination. After termination of the Condominium, each Owner shall own an undivided share of the Condominium Property and all assets of the Association as a tenant in common in accordance with Exhibit "E".

16.5 Notice to Mortgagees. Any Mortgagee, upon written request to the Association (such request to state the name and address of such Mortgagee and the Unit number at issue), will be entitled to timely written notice of any proposed termination of the Condominium.

## **ARTICLE XVII** **VOTING RIGHTS**

Association Membership and Voting. Each Unit shall have one (1) vote in the Association. Where a Unit is owned by more than one owner, the co-tenants of the Unit shall file a voting certificate with the Association, in accordance with the Articles and Bylaws of the Association, setting forth which co-tenant is designated to cast the vote for that Unit.

**ARTICLE XVIII**  
**MERGER**

This Declaration, the Association and the Common Elements of the Condominium described herein may be merged with the declaration of condominium, condominium association and common elements of another independent and separate condominium to form a single condominium with the consent of sixty-six and two-thirds percent (66-2/3%) of the total number of voting interests and with the approval of all of the record owners of liens on the Units. In the event such consent and approval is obtained, a new or amended declaration of condominium, articles of incorporation and bylaws of the Association shall be recorded and shall contain such provisions as are necessary to amend and modify the appurtenances to the Units and percentages by which the Owners of Units share the Common Expenses and own the Common Surplus and Common Elements in order to create a consolidated single condominium.

**ARTICLE XIX**  
**SEVERABILITY**

The invalidity in whole or in part of any covenant or restriction, or any article, section, subsection, sentence, clause, phrase or word, or other provision of the Condominium Documents and the Condominium Rules and Regulations shall not affect the validity of the remaining portions.

IN WITNESS WHEREOF, the Developer has executed this Declaration of Condominium this \_\_\_\_ day of \_\_\_\_\_, 2007.

**DILWORTH DEVELOPMENT, INC.**

By: \_\_\_\_\_  
Michael Dilworth, President

STATE OF ALABAMA

LEE COUNTY

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that Michael Dilworth, whose names is signed to the foregoing Declaration of Condominium as President of Dilworth Development, Inc., an Alabama corporation, and who is known to me, acknowledged before me on this day that, being informed of and understanding the contents of same, that he executed the same voluntarily as such officer for and on behalf of said corporation on the day the same bears date.

Given under my hand the \_\_\_ day of \_\_\_\_\_, 2007.

(Notary Seal)

\_\_\_\_\_  
Notary Public, State at Large  
My Commission Expires

Prepared by:

Gerald A. Mattson

HAYGOOD, CLEVELAND, PIERCE, MATTSON & THOMPSON, L.L.P.

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