

**DECLARATION OF CONDOMINIUM OF  
THE CONDOS AT MILL CREEK, A CONDOMINIUM**

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**DECLARATION OF CONDOMINIUM  
OF  
THE CONDOS AT MILL CREEK, A CONDOMINIUM**

THIS DECLARATION, made this 6 day of August, 2004, by Tigertown Investments, Inc., as Manager of RPM/Millcreek, LLC, an Alabama limited liability company, hereinafter called "Developer", for itself, its successors, grantees and assigns.

**RECITALS**

1. The Developer is the fee simple Owner of that certain parcel of Real Property situated in the County of Lee, State of Alabama, hereinafter more particularly described, on which is located an apartment complex known as Golfview Apartments which will be converted to a Condominium Project known as The Condos at Mill Creek, a Condominium, and Developer intends to improve said Real Property in the manner set out herein.

2. The Developer proposes to establish a Condominium pursuant to the provisions of the Alabama Uniform Condominium Act of 1991. The Condominium shall be known as The Condos At Mill Creek, A Condominium.

3. The Condominium shall be comprised of seven (7) buildings containing eight (8) Units for a maximum number of fifty-six (56) Units as shown on Exhibit "B" attached hereto and made a part hereof. The Condominium is fully located within Lee County, Alabama.

4. This disclosure is given to comply with §35-8A-406 of the Alabama Uniform Condominium Act of 1991, Code of Alabama (1975), §35-8A-101, *et. seq.* (the "Act"). The Condominium contains conversion Buildings containing Units that may be occupied for residential use. Accordingly, the Declarant makes the following representations:

- (a). To the best of Declarant's knowledge, the approximately age of the structural components and mechanical and electrical installations which are material to the use and enjoyment of the Buildings are three (3) years of age; and
- (b). There are no outstanding notice of uncured violations of any building code or other municipal regulations and, accordingly, no costs are to be expended or reserved to cure such violations.

NOW, **THEREFORE**, the Developer, hereby makes the following Declaration.

**I. DEFINITIONS**

The Recitals are incorporated into and made a part of the terms and conditions of this Agreement. The terms used in this Declaration and in the By-Laws shall have the meanings stated in the Alabama Uniform Condominium Act of 1991, and as follows, unless the context otherwise requires:

- 1.01 "Act" means the Alabama Uniform Condominium Act of 1991, Code of Alabama (1975), Section 35-8A-101, *et seq.*

- 1.02 "Articles" means the Articles of Incorporation of the Association, recorded in the Office of the Judge of Probate of Lee County, Alabama.
- 1.03 "Assessment" means proportionate share of the funds required for the payment of the Common Elements which from time to time may be levied against each Unit Owner.
- 1.04 "Association" means **THE CONDOS AT MILL CREEK HOMEOWNERS' ASSOCIATION, INC.**, an Alabama non profit corporation, and its successors, and is the corporation organized under the Act.
- 1.05 "Board" means the Board of Directors of the Association.
- 1.06 "Building" or collectively "Buildings" means the buildings designated as Building "A", Building "B", Building "C", Building "D", Building "E", Building "F", and Building "G", and all structures or structural improvements located in the Buildings on the Real Property and forming part of the Condominium.
- 1.07 "By-laws" means the duly adopted By-Laws of the Association, identified as "Exhibit C-2" attached hereto and made a part hereof as if set out fully herein.
- 1.07(a) "Clubhouse" means the building designated as the "Clubhouse" on the Plans.
- 1.09 "Common Elements" means all portions of the condominium other than the Units or Limited Common Elements.
- 1.9 "Common Expenses" means expenditures made by or financial liabilities of the Association, together with any allocations to reserves.
- 1.10 "Common Surplus" means the excess of all receipts of the Association arising out of the Common Elements over the amount of the Common Expenses.
- 1.11 "Condominium" means The Condos At Mill Creek, A Condominium, and consists of the Condominium Property submitted to the Condominium form of ownership by this Declaration.
- 1.12 "Condominium Documents" means the Declaration, By-Laws, Articles and all Rules and Regulations adopted by the Association and all exhibits attached thereto as the same may be amended from time to time.
- 1.13 "Condominium Property" or "Property" means all property, both real and personal or mixed, which is submitted to the Condominium form of ownership as provided for herein and includes the Real Property and all improvements now existing or hereafter placed thereon and all easements, rights, interests, or appurtenances thereto, and all personal property now or hereafter used in connection therewith.
- 1.14 "Construction Lender" means any lender holding a mortgage or vendor's lien on any part or all of the Real Property prior to the filing of this Declaration.



- 1.14(a) "Conversion" or "Conversion Building" means a building that at any time before creation of the Condominium was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers, including the Buildings.
- 1.15 "Declaration" means this Declaration of Condominium and any amendments thereto which may be made from time to time.
- 1.16 "Developer" means Tigertown Investments, Inc., as Manager of RPM/Millcreek, LLC , an Alabama limited liability company, and its successors and assigns.
- 1.17 "Development" shall have the same meaning as "Condominium Property" or "Property".
- 1.18 "Development Rights" shall have the same meaning as is defined in the Act and as set out in the Declaration.
- 1.18(a) "Garage Buildings" shall mean Building 1, Building 2, Building 3 and Building 4 as shown on the Plans attached hereto which house Garage Units and storage facilities as described herein.
- 1.18(b) "Garage Units" shall mean the Garage Units designated on the Plans in Building 1, Building 2, Building 3 and Building 4 and storage facilities associated therewith, if so indicated on the Plans.
- 1.19 "Limited Common Elements" shall have the same meaning as is defined in the Act and as set out herein in Section 5.12.
- 1.20 "Member" means a member of the Association, membership in which is confined to Unit Owners.
- 1.21 "Mortgagee" means any lender holding a mortgage or vendor's lien on any part or all of the Condominium Property.
- 1.22 "Occupant" means a person or persons in possession of a Unit, regardless of whether that person is the Unit Owner.
- 1.23 "Parking Space" means a space in the parking area for the sole purpose and use as a location to park personal automobiles and similar sized vehicles.
- 1.24 "Parking Area" means the improvement located in the real property and used to park personal automobiles and similar sized vehicles.
- 1.25 "Person" means a natural person, a corporation, a partnership, a limited partnership, a limited liability company, the Association, a Trustee, or other legal entity.
- 1.26 "Plans" mean the site plan, floor plans, and elevations of the Condominium prepared by Grady L. Jimmerson, Jr., Alabama License Number 19746 and Jimmerson Surveying of Auburn, Alabama and McKean & Associates Architects, LLC, which are marked "Exhibit B" and attached hereto and expressly made a part hereof as though fully set out herein. Attached

hereto as part of said Plans are the Certificates of Occupancy for the Buildings issued by the City of Auburn Public Safety Department. The Plans contain a certification by an engineer or architect that the Plans contain all information required by the Act.

- 1.27 "Real Property" means the Real Property which is submitted to the Condominium form of ownership as provided for herein being initially described on Exhibit "A" attached hereto and made a part hereof.
- 1.28 "Rules and Regulations" shall mean the Rules and Regulations that may from time to time be approved by the Association or the Board.
- 1.29 "Special Declarant Rights" shall have the same meaning as is defined in the Act and as set out in the Declaration.
- 1.30 "Unit" or "Private Element" shall have the same meaning as "Unit" as defined in the Act. The Units are designated on the Plans. In the event a Unit Owner shall purchase a Garage Unit, then such Garage Unit shall be deemed to be part of the Unit.
- 1.31 "Unit Owner" means the Owner of a Unit.
- 1.32 "Utility Services" shall include but not be limited to electrical power, gas, garbage water and sewage disposal.

When the context permits, use of the plural shall include the singular, use of the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

## II. NAME

2.01 The name by which this Condominium is to be known is The Condos At Mill Creek, A Condominium. The Condominium is located at 3297 South College Street, Auburn, Alabama 36832.

## III. THE REAL PROPERTY

3.01 The Real Property owned by the Developer which is herewith submitted to the Condominium form of ownership is the parcel of Real Property lying and being in Lee County, Alabama, and being more particularly described in Exhibit "A". The Developer may subject additional properties to the terms and conditions of the Declaration at which time the number of Units shall be adjusted.

The Real Property is subject to the following:

- (a) Zoning, planning and other restrictions or regulations upon the use of the Real Property as may be imposed by the City of Auburn, Alabama, or any other governmental authorities having jurisdiction over the Real Property.
- (b) Development Rights and Special Declarant Rights granted Developer by the Condominium documents and by the Act.
- (c) All ad valorem taxes and assessments.

- (d) The rights of eminent domain and other governmental rights of police power.
- (e) Easements or claims of easements not shown by the public records.
- (f) Covenants, restrictions, reservations, easements and rights-of-way, if any, heretofore imposed of record affecting title to said Property, including but not limited to the following:
  - (i) Easement for Utilities shown on the Plat of Survey made by Alva T. Webb, II dated October 2, 1990 and referenced in the Deed recorded at Book 1549 at Page 199 in the Office of Judge of Probate of Lee County, Alabama;
  - (ii) Easements for Sanitary Sewer granted to the City of Auburn, as recorded at Deed Book 1189, at Page 510 in the Office of Judge of Probate of Lee County, Alabama; and Deed Book 1189, at Page 524 in the Office of Judge of Probate of Lee County, Alabama;
  - (iii) Easement to the Water Works Board of the City of Auburn as recorded in Deed Book 1527, at Page 332 in the Office of Judge of Probate of Lee County, Alabama dated July 30, 1990;
  - (iv) Right of Way and Easement in favor of South Central Bell Telephone Company from Spirit of Auburn, Inc. recorded in Book 1605 at Page 208 in the Office of Judge of Probate of Lee County, Alabama dated February 28, 1991; and
  - (v) Building Setback Lines and Easements for Drainage and Utilities as shown on the Survey of T. Richard Fuller, L.S., Alabama Registration Number 7384 dated February 24, 2000 as referenced in the Deed recorded at Book 2196 at Page 205 in the Office of Judge of Probate of Lee County, Alabama.
- (g) Encroachments, overlaps, boundary line disputes, and any other matter which would be disclosed by an accurate survey and inspection of the Real Property.
- (h) Encroachments, overlaps, boundary line disputes, and any other matter shown on the Survey prepared by Grady L. Jimmerson, Jr., Alabama License Number 19746 dated June 30, 2004.
- (i) Terms and conditions of all permits and licenses of Federal, State and local government, including applicable agencies and departments and private and quasi governmental agencies having jurisdiction over the Real Property.
- (j) Rights of other parties, the United States of America or the State of Alabama.

#### IV. PURPOSE

4.01 The Developer hereby submits the Real Property described above together with all improvements, buildings, structures, and all other permanent fixtures thereon, and all rights and privileges belonging or in any way pertaining thereto, to the Condominium form of ownership and use in the manner provided for by the "Alabama Uniform Condominium Act of 1991", Code of Alabama (1975), Section 35-8A-101, et seq. There shall be no more than fifty-six (56) Units included within the Condominium, subject to the

development rights retained by the Declarant to dedicate additional property to the Product, as set forth herein.. The Condominium shall be located in Lee County, Alabama.

## V. DEVELOPMENT PLAN

5.01 **Plans.** The improvements have been substantially completed as evidenced by the Certificate of Occupancy issued by the Codes Enforcement Division of the City of Auburn Public Safety Department, a copy of which is attached hereto as Exhibit "B" as part of the Plans.

5.02 **Amendments.** This Declaration may be amended by the Developer without the consent of any Unit Owner, Mortgagee, or other Person in order to exercise any Development Rights or Special Declarant Rights so long as said amendment complies with the requirements of the Act. This provision shall not apply to the Construction Lender.

5.03 **Agreement.** Each Person or entity who shall acquire any Unit in the Condominium or interest in or lien upon any such Unit shall be deemed, by accepting a conveyance of or otherwise acquiring such Unit interest or lien, to have agreed and consented, within the meaning of this Declaration and of the Act to be bound by the terms and provisions hereof and to have further agreed and consented that any amendment to this Declaration executed by the Developer alone pursuant hereto shall be binding and effective as written notwithstanding the fact that the undivided interest of the Unit Owners in the Common Elements will be changed thereby.

5.04 **Easements.** Easements are reserved to the Developer throughout the Common Elements as may be reasonably necessary for the purpose of discharging the Developer's obligations or exercising any Development Rights or Special Declarant Rights. Further, the Developer, its successors and assigns, reserves a perpetual nonexclusive easement for access, ingress and egress in, over and through all drives, access routes, parking areas and other common areas for its guests, licensees, lessees, customers and employees to and from any adjacent and contiguous property for the purpose of real estate sales or any other business operated by the Developer on such property. Developer also reserves to itself the right to use an office located in the Clubhouse in the approximate size of 196 square feet for real estate sales so long as the Developer owns or manages Units in the Condominium. Developer reserves to itself, Tenants, assigns, its licensees, lessees, customers, employees, purchasers of Units and their tenants, servants, employees, agents, visitors, invitees, or licensees, a perpetual nonexclusive easement for access, ingress and egress in, over and through all drives, access routes, and parking areas.

A. **Utilities and Drainage:** Easements are reserved throughout the Condominium Property as may be required for Utility Services and drainage in order to adequately serve the Condominium; provided, however, such easements to a Unit shall be only in accordance with the Plans unless approved in writing by the Unit Owner. Each Unit shall have an easement as may be required to drain the Condominium Property adequately. Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use all pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Units and located in such Unit. The Association shall have a right of access to each Unit to inspect the same, to remove violations therefrom, and to maintain, repair or replace the Common Elements contained therein or elsewhere on the Condominium Property; provided such right of access, except in the event of emergency, shall not unreasonably interfere with the Unit Owners permitted use of that Unit, and except in the event of emergency, entries shall not be made without prior notice to the Unit Owner.

B. **Encroachments:** If any portion of the Common Elements encroaches upon any Unit, or if any Unit encroaches upon any other Unit or upon any portion of the Common Elements as a result of the construction of any building, or if any such encroachment shall occur hereafter as a result of settling or shifting of any Building, a valid easement for the encroachment and for the maintenance of the same shall exist so long as such Building stands. In the event any Building, any Unit, any adjoining Unit, or any adjoining Common Element shall be partially or totally destroyed as a result of fire, or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Elements upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Elements due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance therefore shall exist so long as such Building or Buildings shall stand.

C. **Support:** Each Unit shall have an easement of support and of necessity and shall be subject to an easement of support and of necessity in favor of all other Units, and the Common Elements.

D. **Access:** Each Unit shall have an easement for pedestrian traffic over, through, and across sidewalks, paths, walks, walkways, and lanes, and light passage ways, as the same may from time to time exist in the Common Elements; and for ingress and egress over, through and across such portions of the Common Elements as may from time to time be paved and intended for such purposes, but the same shall not give or create in any Person the right to park on any portion of the Condominium Property not designated as a parking area nor shall it give or create in any Person the right to use or occupy a Limited Common Element designated for the exclusive use of others. This easement shall be non-exclusive and shall include the right of ingress and egress to a public street or highway upon and over Common Elements providing such access and as shown on the Plans.

#### 5.05 **Description of the Condominium:**

(a) **General:** The Condominium is located at 3297 South College Street, Auburn, Alabama and contains seven (7) residential unit buildings (the "Buildings") containing eight (8) Units each, for a maximum total of fifty-six (56) Units. The Buildings are currently operated as an apartment complex known as "Golfview Apartments" and will be converted by the Declarant to the Condominium form of ownership pursuant to the Act. The Buildings (sometimes referred to herein individually or collectively as a "Building") are comprised of a mixture of buildings containing one-bedroom Units, a one-bedroom handicap Unit, two-bedroom Units, a two bedroom handicap Unit and three-bedroom Units, together with a Clubhouse Building, an adjacent Exercise Room and meeting room, swimming pool and pavilion, laundry facility, carwash area, and access and appurtenant facilities described herein. There are also four buildings containing garage units and some garage units include a storage facility (a total of fifteen garage units and twelve of the garage units include storage facilities) which will also be made available to Unit Owners at an additional price as further described herein. Ownership of a Unit does not entitle a Unit Owner to use of the garage units or storage facilities which are to be sold and purchased separately.

The Buildings are shown as Building "A", Building "B", Building "C", Building "D", Building "E", Building "F", and Building "G" on the Plans attached hereto as Exhibit "B" and are further described as follows:

- (i) Building "A" is comprised of eight (8) three (3) bedroom Units with each Unit having two (2) bathrooms each;

- (ii) Buildings "B", "C", "D", "E", and "F" are comprised of eight (8) two (2) bedrooms Units each with each Unit having two (2) bathrooms each. Unit Number 104 in Building "B" is a two bedroom handicap Unit having two (2) bathrooms.
- (iii) Building "G" is comprised of eight (8) one (1) bedroom Units with each Unit having one (1) bathroom each. Unit Number 102 in Building "G" is a one bedroom handicap Unit having one (1) bathroom.

Each Unit has an outside storage closet area located on the porch (if a ground floor unit) or patio (if a second floor unit) of such Unit. The makeup of the Buildings is further described as follows:

Building	No. of Units	No. of Bedrooms/Unit	No of Bathrooms/Unit
"A"	8	3	2
"B"	8	2	2
"C"	8	2	2
"D"	8	2	2
"E"	8	2	2
"F"	8	2	2
"G"	8	1	1
	56		

As described above, the Project contains four (4) garage buildings described as Building 1, Building 2, Building 3 and Building 4 on the Plan (said buildings are sometimes referred to herein as the "Garage Buildings") which contain Garage Units ("Garage Units") together with, if so indicated on the Plan, storage facilities being further described as follows:

- (i) Building 1 contains four (4) Garage Units described as G1, G2, G3 and G4 and each Garage Unit in Building 1 includes a storage facility located at the ends of the Garage Building and labeled correspondingly with the Garage Units on the Plans as G1, G2, G3 and G4;
- (ii) Building 2 contains four (4) Garage Units described as G5, G6, G7 and G8 and each Garage Unit in Building 2 includes a storage facility located at the ends of the Garage Building and labeled correspondingly with the Garage Units on the Plans as G5, G6, G7 and G8;
- (iii) Building 3 contains five (5) Garage Units described as G9, G10, G11, G12 and G13 and Garage Unit 9 and Garage Unit 10 in Building 3 will include a storage facility located at the end of the Garage Building and labeled correspondingly with the Garage Units on the Plan as G9 and G10. Garage Units G11, G12 and G13 do not include a storage closet; and

- (iv) Building 4 contains two (2) Garage Units described as G14 and G15 and both G14 and G15 in Building 4 include a storage closet labeled correspondingly with the Garage Units on the Plans as G14 and G15.

Garage Units will be offered for sale on a first-come-first-serve basis to Unit purchasers at an additional price. Not all Garage Units include a storage facility. Storage facilities shall only be included with the Garage Unit if so labeled correspondingly on the Plans. Garage Units G11, G12, and G13 in Building 3 do not include storage facilities. Purchase of a Unit in the Project does not entitle the owner thereof to use of a Garage Unit unless such Garage Unit is also purchased by the Unit Owner. Ownership of a Garage Unit does not entitle the owner thereof to a vote in the Association separate and distinct from the voting rights associated with a Unit. Garage Units can only be used by Unit Owners which purchase such Garage Units. Garage Units are offered separate from the Units. Once a Garage Unit is purchased by a Unit Owner, such Garage Unit and the storage facility if such Garage Unit includes a storage facility, shall be deemed a part of the Unit and can only be sold or transferred in conjunction with the sale or transfer of a Unit by the Unit Owner. A Unit Owner may not own a Garage Unit or storage facility separate and apart from the ownership of a Unit.

The Condominium further contains a Clubhouse Building containing an office and storage facility and an adjacent building connected by a breezeway with an exercise room and meeting room. Building 4 contains a laundry facility, storage room and a covered car wash area for the benefit of Unit Owners. The Declarant has reserved the right to utilize the Office in the Clubhouse Building (which is approximately 14' x 14') for the sale of Units so long as the Declarant still owns or retains any Units in the Condominium development.

5.06 Units - Private Elements: The portion of the Development which the Unit Owner shall have exclusive use thereof, is the Unit which is owned by the Unit Owner. Unless otherwise provided herein, the Unit boundaries shall be as provided for under Ala. Code §35-8A-202. The boundaries of the Units are further described as follows:

A. Horizontal Boundaries. -(Planes). The upper and lower boundaries extended to their planer intersections with the vertical boundaries of each Unit shall be:

(1) Upper Boundary. The area below or what is customarily below (the lower surface) any ceiling within the upper floor of a Unit.

(2) Lower Boundary. The horizontal plane of the unfinished upper interior surface of the lowest floor of a Unit.

B. Vertical Boundaries. -(Planes). The vertical boundaries of each Unit shall be the vertical planes of the interior surfaces of exterior windows and the interior surfaces of the entry doors bounding a Unit, and the inner studs within the walls of the Unit perimeter, excluding paint, wall paper, and light coverings, sheetrock and paneling extended to their planer intersections with each other and with the upper and lower boundaries.

5.07 Unit Floor Plans. The floorplans of the Units are shown on the Plans attached hereto as Exhibit "B".

5.08 Unit Ownership. Each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit. Each Unit Owner shall have the unrestricted right of ingress and egress to his Unit, which right shall be an appurtenance to his Unit. The private elements of each Unit shall consist of the

following:

- A. The air space of the area of the Building lying within the Unit boundaries, less and except the Limited Common Elements as described herein lying within the Unit boundaries.
- B. The surfacing materials on the interior of the exterior walls and on interior walls separating one Unit from another Unit. This is intended to include the sheetrock or paneling on any common-party walls falling between Units. Such sheetrock or paneling is a private element.
- C. The structural components and surfacing materials of all interior walls located within the boundaries of the Unit.
- D. The surfacing materials of the floors and ceilings of the Unit.
- E. Any toilets, sinks or other appliances installed within a Unit by a Unit Owner, lighting fixtures and all hardware and interior and exterior wall fixtures except those exterior lighting fixtures assigned to the common use of the Condominium.
- F. All interior trim and finishing materials within the confines of the Unit.
- G. The Unit shall include a storage closet located off the porch (if a second floor Unit) or patio (if a ground floor Unit) of such Unit which porch or patio is part of the Limited Common Elements. In the event a Unit Owner purchases a Garage Unit then such Garage Unit shall be deemed part of the Unit.

5.09 Surfaces. A Unit Owner shall not be deemed to own the structural components of the perimeter and/or load-bearing walls, nor the windows and doors bounding the Units. A Unit Owner, however, shall be deemed to own and shall have the exclusive right and duty to repair and maintain sheetrock, paneling, paint, repaint, tile, wax, paper, or otherwise finish and decorate the surfacing materials on the interior of exterior walls and on window screens; and all appurtenant installations, including all pipes, ducts, wires, cables, and conduits used in connection therewith, for services such as power, light, telephone, sewer, water, heat and air conditioning, whether located in the boundaries of the Unit or in common areas, which are for the exclusive use of the Unit; and all ceilings and partition walls. A Unit Owner shall have the exclusive right and duty to wash and keep clean the exterior and interior surfaces of windows and doors bounding his Unit.

5.10 Changes. The Developer reserves the right to change the interior design and arrangement of any and all Units owned by it. The Developer further reserves the right to alter the boundaries between Units, which said change shall be reflected by an amendment of this Declaration and shall be known as a Special Declarant Right, which may be executed by the Developer alone, notwithstanding the procedures for amendment described herein. However, no such change of boundaries shall increase or decrease the number of Units, nor alter the boundaries of the Common Elements without amendment of this Declaration in the manner described herein. If the boundaries of more than one (1) Unit are altered, the Developer shall appropriately reapportion the shares of the Common Elements which are allocated to the altered Units; provided, however, the Special Declarant Right granted by this section must be exercised on or before ten (10) years from the date of the recording of this Declaration in the Office of the Judge of Probate of Lee County, Alabama or in the case of Developer's exercise of the right to add subsequent phases of the Project, ten (10) years from the date of such submission of a subsequent phase to the terms and conditions of this Declaration. No assurance is made concerning whether or not any Unit will be or will not be changed by the Developer nor is any assurance made concerning the nature, character, or quality of said change. The exercise by the Developer of the Special



Declarant Right to change a Unit or number of Units does not obligate the Developer to exercise said right in any one or all of any other Unit in the Condominium. Developer reserves the right as a Special Declarant Right to add additional property to the Development if such right is allowed as a Special Declarant Right pursuant to the Act, in which case the Common Elements and Common Expenses shall be adjusted accordingly.

5.11 **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 Elements in conjunction with the other Owners. The Common Elements of the Condominium are all portions of the Condominium other than the Units and will include the common areas and facilities located substantially as shown on the Plans and Plat. Such common areas and facilities will include the following:

- A. All of the Real Property.
- B. All improvements and parts of the Real Property which are not a Unit or Private Element.
- C. All parking areas, driveways and other means of ingress and egress.
- D. 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 situated entirely within a Unit for service only of that Unit.
- E. All tangible personal property required for the maintenance and operation of the Condominium and for the common use and enjoyment of the Unit Owners.
- F. 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.
- G. Lawn areas, landscaping, walkways, sidewalks, curbs and steps.
- H. Exterior steps, ramps, and handrails, stairs and stairwells and stoops.
- I. The Clubhouse, adjacent building containing a fitness room and meeting room, pool, pavilion, laundry facility, storage room, the car wash area shown the Plans shown on Exhibit "B" attached hereto and stairwells in each Building. The Developer has chosen to treat the stairwell as a Common Element instead of a Limited Common Element even though such stairwells benefit the particular Building in which such stairwell is located. Accordingly, the maintenance of the stairwells shall be a Common Expense of Unit Owners in accordance with their ownership of the Common Elements.

- J. All area, outdoor and exterior lights not metered to individual Units and supports and all entrance and related type signs.
- K. The Unit entry ways and stoops affixed to each Unit, even though designated as Limited Common Element.
- L. All other parts of the Condominium Property existing for the common use or necessity of the existence, maintenance and safety of the Condominium.
- M. All other items listed as such in the Act.

5.12 **Limited Common Elements.** The Limited Common Elements located on the Property and the Unit to which they are assigned are as follows: front door steps, sidewalks and walkways, porches and patios on each Unit, if any, providing access to Units which are served by such doorsteps, sidewalks or walkways.

## VI. COMMON ELEMENTS

6.01 **Ownership.** A schedule setting forth the percentage of undivided interest of each Unit in the Common Elements is attached hereto, marked "Exhibit D" and by reference made a part hereof. The percentage of undivided interest of each Unit in the Common Elements is determined in accordance with the size of the Unit dependent upon the number of bedrooms located in the Unit and by dividing one by the component factor for a one bedroom, two bedroom and three bedroom Unit as shown on Exhibit "D" attached hereto. For purposes of percentage of ownership in the Common Elements, percentage of Common Expenses, and percentage of Common Surplus, and voting on all matters requiring Action by the Owners, each Unit shall be entitled to one (1) vote. 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 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 Owner, and the holder of any Mortgage or lien on or other interest in any Unit, with the exception of the Construction Lender, 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 any Common Surplus and each Unit's share of the Common Expenses as may result from the addition, if any, of further phases, and to have so agreed and consented to any amendment or amendments to this Declaration effectuating the same. Developer has reserved the right as a Special Declarant Right to add additional phases to the Development, if such Special Declarant Right is allowed under the Act, in which case the Common Elements and Common Expenses shall be adjusted accordingly.

6.02 **Use.** Each Owner shall have the right to use the Common Elements to include the drive, open area and common parking areas and restricted to the exclusive use of and as an appurtenance to a Unit and subject to any portion subject to leases made by or assigned to the Board in conjunction with the Owners of other Units as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of 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 grant easements with respect to parts of the Common Elements subject to the provisions of the Declaration and By-Laws.

6.03 **Share of Common Expenses and Limited Common Expenses.** Each 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 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 By-Laws. Assessments shall be collected by the Association on a monthly basis. No Owner shall be exempt from payment of his or her proportionate share of the Common Expenses or Limited Common Expenses by waiver or nonuse or non-enjoyment of the Common Elements or Limited Common Elements, or by abandonment of his Unit. Common Expenses and Limited 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. So long as the Developer shall have the right to appoint, remove or designate any officer or member of the Board of Directors, each Owner, other than the Developer, shall pay his or her proportionate share of the Common Expenses or Limited Common Expenses as assessed and Developer shall have the option to either (1) pay all other costs associated with the operation of the Association, or (2) pay the proportionate share of Common Expenses or Limited Common Expenses as assessed to each Unit owned by Developer.

6.04 **Late Payment of Assessments.** Assessments for Common Expenses and Limited Common Expenses, and 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 Attorney's fees, and then to the Assessment payment due. The Association may, in the manner provided for in the By-Laws, after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, By-Laws, and Rules and Regulations of the Association.

6.05 **Liens for Assessments.** The Association is hereby granted a lien upon each Unit and its appurtenant undivided interest in Common Elements and upon the goods, furniture and effects belonging to the Unit Owner and located in such Unit, which lien shall secure and does secure the monies 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 attorney's fee, which may be incurred by the Association in enforcing this lien upon said Unit and its appurtenant undivided interest in the Common Elements. Said lien is subordinate to preexisting mortgage liens as provided in 6.06 herein.

6.06 **Priority of Lien.** The Association shall have a lien for nonpayment of Common Expenses as is provided by the Act. In any suit for the foreclosure of a lien for Assessments, the Association shall be entitled to rental from the Owner from the date on which the payment of any Assessment or installment thereof becomes delinquent and shall be entitled to the appointment of a receiver for said Unit, without notice to the Owner. The rental required to be paid shall be equal to the rental charged on comparable type Units in the area in which the Condominium is located. The lien granted to the Association shall further secure such advances for taxes and other payments which may be required to be advanced or paid by the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at a rate set by the Board or the Association in order to preserve and protect its lien, and the Association shall further be entitled to interest at a rate set by the Board or the Association but in no case shall said interest exceed the maximum legal rate on

any such advances made for such purposes. All Persons, firms, corporations or entities 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. A sale or transfer pursuant to a foreclosure of a first mortgage or first vendor's lien shall extinguish a subordinate lien for Assessments which became payable prior to such sale or transfer; Provided, however, a sale or transfer pursuant to a foreclosure of a first mortgage or first vendor's lien shall not extinguish the lien of the Association to the extent of the Common Expense Assessments based on the periodic budget adopted by the Association pursuant to the Act which would have become due in the absence of acceleration during the six months immediately preceding the institution of an Action to enforce the lien. However, any such delinquent Assessments which were extinguished pursuant to the foregoing provision may be reallocated and assessed to all of the Owners as a Common Expense. Any such sale or transfer pursuant to foreclosure does not relieve the purchaser or transferee of a Unit from liability for, nor the Unit from the lien of, any Assessments made thereafter. Notwithstanding the foregoing; assessment liens of the Association shall be subordinate to any mortgage of record and outstanding as of the date of the filing of this Declaration.

6.07 Disposition of Surplus. Each Unit shall carry with it a proportionate share of any Common Surplus and the proportionate share of any Common Surplus shall be the same ratio as that 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.

## VII. THE ASSOCIATION

7.01 Powers and Duties. The operation and administration of the Condominium shall be by the Association of the Owners, pursuant to the provisions of the Act and the Bylaws of the Association. 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 Owners of the Condominium with reference to the Common Elements or the Limited 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. 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 of 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 purposes 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 Limited Common Expenses and is further authorized to provide adequate remedies for failure to pay such Assessments.

7.02 Name. The name of the Association shall be The Condos At Mill Creek Homeowners' Association, Inc.

7.03 **Members.** Each Unit Owner shall be a Member of the Association as long as he or she is a Unit Owner. An Owner's membership shall immediately terminate when he or she 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 the Unit.

7.04 **Voting Rights.** Each Unit shall be entitled to one (1) vote, which vote is not divisible. The total number of votes is fifty-six (56). In the event additional property is added to the Project, the number of votes shall be adjusted accordingly. The vote for a Unit shall be cast by the Owner thereof in the manner provided for herein and in the By-Laws. However, should the Association be an Owner, it shall not have the voting right for that Unit.

7.05 **Designation of Voting Representative.** In the event a Unit is owned by one (1) Person, his right to vote shall be established by the record title to the 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, limited partnership or limited liability company, 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 superceded 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 Owner thereof.

7.06 **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 the Unit.

7.07 **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 seven (7) 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.

7.08 **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 performance 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.

7.09 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 or upon the common elements, or by other Owners or Persons.

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

7.11 Proviso. Subject to the provisions herein, until the earlier of (i) sixty (60) days after conveyance of seventy-five percent (75%) of the Units then covered by this Declaration 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 Developer's exercise of the Special Declarant 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, but, in that event, the Developer may require, for the duration or the period of developer control, that specified Actions of the Association or Board, as described in a recorded instrument executed by the Developer, be approved by the Developer before they become effective. Provided, however, not later than ninety (90) days after conveyance of twenty-five percent (25%) of the Units to 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 fifty percent (50%) of the Units 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 five (5) members, at least a majority of whom must be Owners other than the Developer. So long as the Developer shall have the exclusive right to appoint, remove, and designate the officers and members of the Board of Directors of the Association, the Developer may increase or reduce the number of members of the Board.

The Developer may make such use of the unsold Units and of the Common Elements 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 the Clubhouse or 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 or if additional phases are added to the Project, then ten (10) years from the adding of any such additional phase to the Project.

7.12 Contracts. If entered into before the Board elected by the 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 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 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 and Limited Common Expenses.

## VIII. MAINTENANCE

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

8.02 **Maintenance by Unit Owner.** Each Unit Owner is responsible for the maintenance, repair, and replacement of his Unit. Each Unit Owner is responsible for the maintenance, repair and replacement of any Limited Common Elements, if any, attached to his Unit as provided in Paragraph 5.11 above.

8.03 **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 (except by development of additional phases as elsewhere provided herein) without prior approval of the Association.

8.04 **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 power, water, sewer, gas, cable 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 properly insured and 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.

E. 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 or porches, specifically including, but not limited to screening or enclosing balconies or porches, installing exterior doors or affixing shutters to windows, without the prior written consent of the Association, which shall be in the Association's sole discretion. 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 Owner 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 of the Condominium Property which are made necessary because of abuse or negligent use by a Unit Owner, their agents, family members, invitees or licensees. 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.

8.05 **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. This paragraph shall be subject to the provisions of Paragraph 7.12 above.

8.06 **Exterior Surface.** The Association shall determine the exterior color scheme of the Condominium Property, including porches or balconies, and shall be responsible for the maintenance of such exterior surfaces, except as may be otherwise provided for herein and except for porches and balconies which shall be maintained by the Unit Owners in accordance with rules adopted by the Association. No Owner shall paint any exterior surface or add or replace anything thereon or affix thereto without the written consent of the Association. Owners shall not affix or attach pictures, flags or banners to windows and/or glass sliding doors that may be seen from streets or parking areas.

8.07 **Exterior Furnishings.** The color schemes of all Exterior furniture and accessories on Exterior porches and balconies shall be approved by the Board prior to placement.

## IX. INSURANCE

To the extent of any inconsistency with the terms and provisions of the Act, the Act shall control with respect to this Section.



9.01 **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.

9.02 **Location 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.

9.03 **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.

9.04 **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.

9.05 **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, foundation, excavation, and other items usually excluded from coverage) including fixtures and equipment to the extent they are part of the Common Elements and Limited Common Elements of the Condominium Property, building service equipment, furniture 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. In addition, any fixtures, equipment, or other Property within the Units which are to be financed by a first Mortgagee (regardless of whether or not such Property is a part of the Common Elements) must be covered by such "master" or "blanket" policy, if required by said first Mortgagee. 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, 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 lawsuits related to employment contracts of the Association. This policy shall also include, if reasonably available, coverage for protection against water damage liability 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 from the funds of the Association. 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.

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

9.07 **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 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 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 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 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 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 the Construction Lender and 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 of neglect of the Association, 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.

9.08 **Liabilities and Responsibilities of Unit Owner.** An 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 Owner shall be responsible for obtaining insurance for his own benefit.

9.09 **Insurance Premiums.** Insurance premiums maintained by the Association shall be paid by the Association as a Common Expense. Should the Association fail to pay such insurance premiums when due, or should the Association fail to comply with other insurance requirements of the Construction Lender or Mortgagee, the Construction Lender or Mortgagee shall have the right, at its option, to order insurance policies and to advance such sums as are required to maintain or procure such insurance. To the extent of any money so advanced, the Construction Lender and Mortgagee shall be subrogated to the Assessment and the lien rights of the Association and against the individual Owners for the payment of such item of 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 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 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 Construction Lender and 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 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 Construction Lender and 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 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 Unit 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 Owners in the undivided shares that are the same as their respective shares in the Common Elements.

C. **Mortgagees.** 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 Owners:

A. **Reconstruction or Repair.** First, if the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof. Any proceeds remaining after defraying such costs shall be distributed to the beneficial Owners, with remittances to 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 Reconstruct Repair.** If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners with remittances to the Construction Lender, 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.

#### X. RECONSTRUCTION OR REPAIR AFTER CASUALTY

To the extent of any inconsistency with the terms and provisions of the Act, the Act shall control with respect to this Section.

10.01 **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. Owners of Eighty percent (80%) of the Condominium voting interest vote not to rebuild. The cost of repair or replacement of a Common Element in excess of insurance proceeds and reserves is a Common Expense as provided in this Declaration.

10.02 **Plans.** Any reconstruction or repair must be substantially in accordance with the Act and in 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 and by one hundred percent (100%) of the Unit Owners.

10.03 **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 a timely manner not to exceed 60 days. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

10.04 **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.

10.05 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 Owners who own the damaged Property or have the exclusive right to use the Limited Common Element attached to his Unit, and against all Owners in the case of damage to Common Elements 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 Elements and facilities in sufficient amounts to provide funds for the payment of such costs. Such assessments for reconstruction and/or repair of damage to Units and Limited Common Elements shall be in proportion to the costs of reconstruction and repair of their respective Units or Limited Common Elements. Such assessments for reconstruction and/or repair of damage to Common Elements and facilities shall be in proportion to the 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.

10.06 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 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 or 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 monies 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 first to replace any revenue funds used in the reconstruction, then to the beneficial Owners of the fund.

## XI. EMINENT DOMAIN

To the extent of any inconsistency with the terms and provisions of the Act, the Act shall control with respect to this Section.

11.01 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 Reconstruction or Repair after casualty 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 an Owner, the 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 an Assessment shall be made against a defaulting Owner in the amount of his award, or the amount of such award shall be set off against the sums hereafter made payable to such Owner.

11.02 **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.

11.03 **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, at 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, then 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.

11.04 **Unit Made Unhabitable.** If the taking is of the entire Unit, or so reduces the size of the Unit such 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 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 Owners. This adjustment shall be done by restating said share of the continuing Owners as percentages aggregating one hundred percent (100%) so that the shares appurtenant to 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 Owner and such 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 Owners who will continue as Owners after the changes in the Condominium effected by the taking. Such Assessments shall be made in proportion to the shares of those 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 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 Owners prior to the taking in proportion to the shares of the Owners in the Common Elements as they exist prior to the changes effected by the taking. Construction Lender shall not be bound by arbitration as provided for herein and shall retain the right to litigate.

11.05 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 Construction Lender, Owner and the first Mortgagee of the Condominium parcel.

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

## XII. USE RESTRICTIONS

The Use of the Condominium Property shall be in accordance with the provisions of this Declaration and with the following provisions so long as the Condominium exists.

### 12.01 Units.

A. Each Condominium Unit shall be occupied for residential purposes only.



B. Each Parking Space shall be for personal and Unit rental use only and shall not be used for any commercial purposes except that parking spaces may be used for the staging of construction of additional phases of the Project.

C. Garage Units shall only be used for personal storage or vehicles of the Unit Owners who own such Garage Units or their lawful tenants, and shall not be used for any other purposes, including without limitation, commercial or industrial uses.

**12.02 Miscellaneous Restrictions.**

A. Nothing shall be stored in or upon the Common Elements or Limited Common Elements without prior consent of the Board except as may be otherwise herein expressly provided.

B. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or in or on the Common Elements which will result in the cancellation of insurance of any Unit or any part of the Common Elements or which will be in violation of any law.

C. No waste shall be committed in or on the Common Elements.

D. Each Unit Owner shall place all garbage and trash in dumpsters to be provided by the Association.

E. No Unit Owner, occupant or guest of Unit Owners or occupant shall disturb or annoy other occupants of the Condominium Property nor shall any occupant or Unit Owner commit or permit any nuisance, noxious, offensive, immoral or illegal Act in his Unit or on the Condominium Property. Any person violating this provision will be removed from the property by proper legal authority.

F. No sign of any kind shall be displayed to the public view on or from any Unit or the Common Elements without the prior written consent of the Board or the written consent of the Managing Agent Acting in accordance with the Board's direction.

G. Except as expressly provided hereinabove, nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Board.

H. No structure of a temporary character, trailer, tent, shack, garage, barn, or other outbuildings shall be permitted on the Property at any time temporarily or permanently, except with the prior written consent of the Board; provided, however, that temporary structures may be erected for use in connection with the construction, repair, or rebuilding of the Buildings or any portion thereof.

I. Parking of vehicles in driveways and Parking Areas shall be subject to the Rules and Regulations of the Board applicable thereto.

J. Except within individual Units, no planting, transplanting, or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Property, except as approved by the Board.

K. Motorcycles, motor bikes, motor scooters, or other similar vehicles shall not be operated within the Property except for the purpose of transportation, it being intended that said vehicles shall not be operated within the Property so as to annoy or disturb persons or endanger persons or Property.

L. All parts of the Property shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage allowed to accumulate nor any fire hazard allowed to exist.

M. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies which require maintenance, modification or repair of the Condominium Property shall be the same as the responsibility for the maintenance and repair of the Condominium Property concerned.

N. Neither the Board nor the Association shall take or permit to be taken any Action that unlawfully discriminates against one or more Owners.

O. No boats or trailers may be parked in Parking Spaces or Common Elements. Parking of vehicles and the like in driveways and Parking Areas shall be subject to the Rules and Regulations of the Board of the Association applicable thereto.

12.03 Pets. No animals or pets of any kind shall be kept in any Unit or Property of the condominium with the exception of those pets owned by the deeded Unit Owner or such Unit Owner's lessee or those required for the assistance of the visual/hearing impaired. Pets of guests or occupants other than the deeded Unit Owner or such Unit Owner's lessee shall not be allowed in the Unit. Any pets not in accordance with the above guidelines found on the property will be removed by the local legal authority.

12.04 Use of Common Elements and Limited Common Elements. The Common Elements shall be used in accordance with this Declaration and only by the Owners and their agents, tenants, family members, invitees, and licensees for access, ingress to, and egress from the respective Units and Common Area and for such other purposes incidental to the use of the Units. However, other areas designated for a specific use shall be used for the purposes approved by the Board. The use, maintenance and operation of the Common Elements shall not be obstructed, damaged, or unreasonably interfered with by any Unit Owner, and shall be subject to any lease, concession, or easement, presently in existence or entered into by the Board at some future time, affecting any part or all of said Common Elements. Nothing shall be stored in or upon the Limited Common Elements without the prior consent of the Board of the Association.

12.05 Unrestricted Right of Transfer. The right of an Owner to sell, transfer, or otherwise convey his ownership shall not be subject to any right of first refusal or similar restriction.

12.06 Leases. Entire Units may be leased by the Unit Owners; provided, however, that such lease and the rights of any tenant thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable Rules and Regulations relating to the lease and rental of Units (including a minimum or maximum number of occupants and rental period and imposition of fines in the event tenants shall be deemed disruptive by the Association) and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board deems appropriate, including eviction. Anything to the contrary notwithstanding, the Developer, and its assigns, retain the right to maintain sales offices, management offices, leasing and operations offices and models on the Condominium Property as provided in Paragraph 7.11 above.

12.07 **Regulations.** Reasonable regulations concerning the use of the Condominium Property may be made by the Developer and amended from time to time by the Board of Directors of the Association; provided, however, that all such amendments thereto shall be approved by not less than a majority of the votes of the Association before such shall become effective. Members not present at meetings considering such regulations or amendments thereto may express their approval or disapproval in writing. Copies of such regulation or amendment shall be furnished by the Association to all Unit Owners of the Condominium upon request.

12.08 **Parking.** The Board of Directors of the Association may or may not in its sole discretion assign specific Parking Spaces to the Unit Owners. If an assignment is made, such assignment shall not be recorded in the public records. The Board of Directors of the Association shall have the right to change the assignment of such Parking Spaces from time to time as in its sole discretion it deems advisable.

12.09 **No Restrictions on Mortgaging Units.** Anything construed in any of the Condominium Documents to the contrary, there shall be no restrictions on the right of an Owner to mortgage his Unit.

12.11 **Construction of Additional Improvements.** Until such time as the Developer has completed and sold all of the Units of the Project or any proposed future improvements on additional property as contemplated herein, or any amenities associated therewith, neither the Unit Owners, nor the Association, nor the users of the Condominium Property shall interfere with the completion of the planned improvements or the sale of the Units. The Developer may make such use of unsold Units and Common Areas as may facilitate such completion and sale.

12.12 **Limitation On the Amount by Which Unit May be Sold.** Developer has imposed no limit on the amount or purchase price by which a Unit or Garage Unit may be sold. Garage Units may be sold only as part of a Unit.

12.13 **Prohibition of Time Shares.** No ownership or occupancy of any Units may be in the form of time shares.

### XIII. AMENDMENT

13. This Declaration and the By-Laws of the Association may be amended as provided in the Act.

### XIV. PURCHASE OF CONDOMINIUM UNIT BY ASSOCIATION

14.01 **Decision.** The decision of the Association to purchase a Condominium Unit shall be made by the Board of Directors without the approval of the Members except as provided in this Article.

14.02 **Limitation.** If at any time the Association is already the Owner of or has agreed to purchase one or more Condominium Units, it may not purchase any additional Condominium Units without the prior written approval of Members holding seventy-five percent (75%) of the votes of those Members eligible to vote thereon, except as provided in this Article. A Member whose Condominium Unit is the subject matter of the proposed purchase shall be ineligible to vote thereon. Notwithstanding the foregoing, however, the foregoing limitations shall not apply to a Condominium Unit either to be purchased at public sale resulting from a foreclosure of the Association's lien for delinquent Assessments where the bid of the Association does not exceed the amount found due the Association, or to be acquired by the Association in lieu of foreclosure of

such lien if the consideration therefore does not exceed the amount required for cancellation of such lien. In any event, the Board of Directors or a designee thereof, Acting on behalf of the Association, may only purchase a Condominium Unit in accordance with this Article, or as the result of a sale pursuant to the foreclosure of:

- (1) a lien on the Condominium Unit for unpaid taxes;
- (2) a lien of a mortgage;
- (3) the lien for unpaid Assessments;
- (4) or any other judgment lien or lien attaching to such Condominium Unit by operation of law.

#### XV. NOTICE OF LIEN ON UNIT

15.01 **Notice of Lien.** A Unit Owner shall give notice in writing to the Secretary of the Association of every lien on his Condominium Unit, other than liens for first mortgages, taxes and special Assessments, within five (5) days after he receives notice of the attaching of the lien.

15.02 **Notice of Suit.** An Owner shall give notice in writing to the Secretary of the Association of every suit or other proceeding that may affect the title to his Condominium Unit, with such notice to be given within five (5) days after the Owner obtains knowledge thereof.

15.03 **Failure to Comply.** Failure to comply with this section will not affect the validity of any judicial proceeding.

#### XVI. RULES AND REGULATIONS

16.01 **Compliance.** Each Owner and the Association shall be governed by and shall comply with the terms of the Condominium Documents and the Rules and Regulations applicable to the Condominium Property. Ownership of a Unit subjects the Owner to compliance with provisions of the Declaration, the Articles, the By-Laws, the Rules and Regulations of the Association, and any contracts to which the Association is a party, as well as to any amendments to any of the foregoing. Failure of the Owner to comply therewith shall entitle the Association or other Owners to an Action for damages or injunctive relief, or both, in addition to other remedies provided in the Condominium Documents and the Act.

16.02 **Enforcement.** The Association, through the Board of Directors, is hereby empowered to enforce the Condominium Documents and all Rules and Regulations of the Association by such means as are provided by the Act, including the imposition of reasonable fines (after reasonable notice and opportunity to be heard) from time to time as set forth in the By-Laws. In the event an Owner fails to maintain his Unit in the manner required in the Condominium Documents and any Rules and Regulations of the Association, the Association, through the Board of Directors, shall have the right to assess the Owner of the Unit for the sums necessary to do the work required to effect compliance and to collect, and enforce the collection of a Special Assessment therefore as provided in this Declaration. In addition, the Association shall have the right, for itself and its employees and agents, to enter such Owner's Unit and perform the necessary work to effect compliance.

16.03 Negligence. An Owner shall be liable for the expense of any maintenance, repair, or replacement rendered necessary by his act, neglect, or carelessness or by that of any member of his family, his lessees, or his or their guests, invitees, employees, or agents, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire or casualty insurance rates occasioned by the use, misuse, occupancy or abandonment of a Unit, or the Common Elements. The liability for such increases in insurance rates shall equal five times the first resulting increase in the annual premium rate for such insurance.

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

## XVII. GENERAL PROVISIONS PERTAINING TO MORTGAGES

17.01 Lender's Notices. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Unit number or address, any mortgage holder insurer, or guarantor will be entitled to timely written notice of:

- A. Any condemnation or casualty loss that affects either a material portion of the project or the Unit securing its mortgage.
- B. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.
- C. Any proposed Action that requires the consent of a specified percentage of mortgage holders.

17.02 Blanket Mortgages. The entire Condominium Property, or some or all of the Units included therein, may be subjected to a single or blanket mortgage or construction loan constituting a first lien thereon created by a recordable instrument executed by all of the Owners of the Property or Units covered thereby. Any Unit included under the lien of such mortgage may be sold or otherwise conveyed or transferred subject thereto. Any such mortgage shall provide a method whereby any Owner may obtain a release of his Unit from the lien of such mortgage and a satisfaction and discharge in recordable form upon payment to the holder of the mortgage of a sum equal to the reasonable proportionate share attributable to his Unit of the then outstanding balance of unpaid principal and accrued interest, and any other charges then due and unpaid. The proportionate share of the mortgage required to be paid for release shall be determined by provisions pertaining thereto stated in the mortgage, or, if the mortgage contains no such provisions, then according to the proportionate share of the common elements of the Condominium attributable to such Unit(s).

## XVIII. SIGNAGE

18. Ground Mounted and Door Signs. The Association shall provide a location sign which shall promote the development name and address only. The Association shall maintain uniform door signs with designated unit numbers. No other door signs shall be permitted unless approved in advance by the Association.

## XIX. TERMINATION

19. The termination of the Condominium may be effected in accordance with the provisions of the Act and by agreement of Owners to which at least ninety percent (90%) of the votes in the Association are allocated. The agreement shall be evidenced by a written instrument executed in the manner required for a deed and recorded in the public records of Lee County, Alabama. After termination of the Condominium, Owners shall own the Condominium Property and all assets of the Association as tenants in common in undivided shares.

## XX. COVENANT AGAINST PARTITION

20. There shall be no judicial or other partition of the Condominium Property or any part thereof, nor shall Developer or any Person acquiring any interest in the Property or any part thereof seek any such partition unless the Property has been removed from the provisions of the Act.

## XXI. MISCELLANEOUS

21.01 Intent. It is the intent of the Developer to create a Condominium pursuant to the Act. In the event that the Condominium created by this Declaration shall fail in any respect to comply with the Act, then the common law as the same exists on the filing date of this Declaration shall control, and the Condominium hereby created shall be governed in accordance with the laws of the State of Alabama, the Articles, By-Laws and all other instruments and exhibits attached to or made a part of this Declaration.

21.02 Covenants, Conditions and Restrictions. All provisions of the Condominium Documents shall, to the extent applicable and unless otherwise expressly therein provided to the contrary, be perpetual and be construed to the covenants running with the land and with every part thereof and interest therein; and all of the provisions of the Condominium Documents shall be binding on and inure to the benefit of any Owner of all or any part thereof, or interest therein, and his heirs, executors, administrators, legal representative, successors, and assigns, but said provisions are not intended to create nor shall they be construed as creating any rights in or for the benefit of the general public. All Owners and Occupants shall be subject to and shall comply with the provisions of the Condominium Documents and any Rules and Regulations promulgated thereunder.

21.03 Severability. The invalidity in whole or in part of any covenant or restriction or any paragraph, subparagraph, sentence, clause, phrase, word or other provision of this Declaration, the Articles, the By-Laws, and the Rules and Regulations of the Association promulgated pursuant thereto, and any exhibits attached hereto, as the same may be amended from time to time, or the Act, or the invalidity in whole or in part of the application of any such covenant, restriction, paragraph, subparagraph, sentence, clause, phrase, word or other provision shall not affect the remaining portion thereof.

21.04 Notice. The following provisions shall govern the construction of the Condominium Documents, except as may be specifically provided to the contrary herein: All notices required or desired under the Condominium Documents to be sent to the Association may be sent by first class mail to such address as the Condominium may designate from time to time by notice in writing to all Owners. Except as provided specifically to the contrary in the Act, all notices to any Owner shall be delivered in person or sent by first-class mail to the address of such Owner at the Condominium, or to such other address as he may have designated from time to time, in a writing to the Association. Proof of such mailing or personal delivery to an Owner by the Association may be provided by the affidavit of the Person or by a post office certificate of mailing. All notices to the Association or to an Owner shall be deemed to have been given when delivered to

the addressee in person or by a post office certificate of mailing. The Construction Lender shall receive all notices as set out above.

21.05 **Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by the Condominium Documents, such dispute or litigation shall be governed by the laws of the State of Alabama.

21.06 **Waiver.** No provisions contained in the Condominium Documents shall be deemed to have been waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

21.07 **Ratification.** Each Owner, by reason of having acquired ownership of his Condominium Unit, whether by purchase, gift, operation of law, or otherwise, shall be deemed to have acknowledged and agreed that all the provisions of the Condominium Documents and any Rules and Regulations promulgated thereunder are fair and reasonable in all material aspects.

21.08 **Captions.** The captions used in the Condominium Documents are inserted solely as a matter of convenience and reference and shall not be relied on and/or used in construing the effect or meaning of any of the text of the Condominium Documents.

21.09 **Gender.** In this document, all singular words shall connote the plural number as well as the singular and vice versa, and the masculine shall include the feminine and the neuter.

21.10 **Costs and Attorney's Fees.** In any proceeding arising because of an alleged default by an Owner, the prevailing party shall be entitled to recover the costs of the proceedings and such reasonable attorney's fees as may be awarded by the Court.

*There is Nothing Further on this Page.*

*Signature Page for Declaration of Condominium*

IN WITNESS WHEREOF, RPM/MILLCREEK, LLC, an Alabama limited liability company, has caused this instrument to be executed on this the 7<sup>th</sup> day of August, 2004.

RPM/MILLCREEK, LLC, an Alabama limited liability company

By: Tigertown Investments, Inc., an Alabama corporation, as its Manager

By: Howard J. Porter, Jr. L.S.  
Howard J. Porter, Jr., as its President

STATE OF ALABAMA        )  
LEE COUNTY                )

I, the undersigned authority, a Notary Public in and for the State of Alabama at Large, do hereby certify that Howard J. Porter, as President of Tigertown Investments, Inc., as Manager of RPM/Millcreek, LLC, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such President of Tigertown Investments, Inc., as Manager of RPM/Millcreek, LLC and with full authority, executed the same voluntarily for and as the Act of said company on the day the same bears date.

GIVEN under my hand and seal this the 6<sup>th</sup> day of August, 2004.

Debbie Stokes  
NOTARY PUBLIC

My Commission Expires: 11/15/05

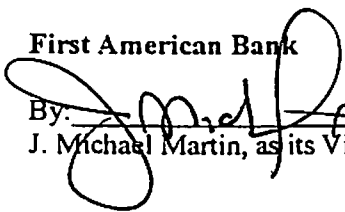


*Signature Page for Declaration of Condominium*

IN WITNESS WHEREOF, First American Bank, has caused this instrument to be executed on this the 6th day of August, 2004.

MORTGAGEE ACKNOWLEDGMENT:

First American Bank

By:  L.S.  
J. Michael Martin, as its Vice-President

STATE OF ALABAMA     )  
Lee COUNTY         )

I, the undersigned authority, Notary Public, in and for said County in said State, do hereby certify that J. Michael Martin, whose name as Vice-President of First American Bank is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the Act of said Bank on the day the same bears date.

GIVEN under my hand and seal this the 6th day of August, 2004.

  
NOTARY PUBLIC

My Commission Expires: 11/15/06

THIS INSTRUMENT PREPARED BY:  
Mark A. Franco, Esq.  
Hill, Hill, Carter, Franco, Cole & Black, P.C.  
425 South Perry Street  
Montgomery, Alabama 36104

THE CONDOS AT MILL CREEK, A CONDOMINIUM

Real Property	EXHIBIT "A"
Plat and Plans	EXHIBIT "B"
Articles of Incorporation and By-Laws	EXHIBIT "C"
Ownership of Common Elements	EXHIBIT "D"
Proposed First Year Budget	EXHIBIT "E"
Rules and Regulations	EXHIBIT "F"
General Description of Improvements	EXHIBIT "G"

## EXHIBIT "A"

Lot Number One (#1) of Mill Creek Park, according to and as shown by map or plat of said subdivision of record in Town Plat Book 22, at Page 169, in the Office of the Judge of Probate of Lee County, Alabama.

LESS AND EXCEPT the following described property: A part of the SW 1/4 of NE 1/4, Section 14, Township 18N, Range 25E, identified as Tract No. 10 on Project No. STPOAF-0015(505) in Lee County, Alabama and being more fully described as follows:

### PARCEL NO. 1 OF 1:

A part of Lot 1, Millcreek Park Subdivision, as recorded in PB 22, PG 169, in the Office of the Judge of Probate in Lee County, Alabama described as follows: Commencing at the NE corner of Section 14; thence S 27°25'27" W and along a line a distance of 2924.38 feet to a point on the required R/W line (said line between a point that is offset 110' and perpendicular to a project centerline at station 68+99.76 and a point that is offset 85' and perpendicular to project centerline at station 60+50) and the grantor's northeast property line, which is the point of BEGINNING; thence S 23°19'27" W and along the required R/W line a distance of 80.04 feet to a point on the grantor's southwest property line; thence N 68°26'35" W and along the grantor's property line a distance of 51.68 feet to a point on the present R/W line; thence N 21°39'0" E and along the present R/W line a distance of 80.00 feet to a point on the grantor's northwest property line; thence S 68°26'35" E and along the grantor's property line a distance of 54.02 feet to a point and place of BEGINNING containing 0.10 acre, more or less.

**EXHIBIT "B"**

**[PLAT AND PLANS]**