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BILL ENGLISH  
PROBATE JUDGE  
LEE COUNTY  
Recording Fee 242.00  
TOTAL 242.00

**DECLARATION OF CONDOMINIUM**

**OF**

**THE SOUTHERN EDGE CONDOMINIUM**

**ARTICLE I**

**PREAMBLE, NAME AND LEGAL DESCRIPTION**

The undersigned, The Southern Edge, LLC, an Alabama limited liability company, whose address is 124 Bragg Avenue, Auburn, AL 36830, ("Developer"), being the holder of fee simple title to that certain real property located in Lee County, Alabama, and more particularly described hereinafter, does hereby submit such lands as described in Paragraph 1.2 below together with the improvements thereon to the condominium form of ownership in accordance with the provisions of Title 35, Chapter 8A, Ala. Code (1975), and the following provisions:

1.1. Name. The name by which this condominium is to be identified is THE SOUTHERN EDGE CONDOMINIUM (the "Condominium").

1.2. Legal Description. Developer is the owner of that certain real property located in Lee County, Alabama, more particularly described in the attached Exhibit "A", which exhibit is incorporated herein by this reference. The property that is hereby submitted to the condominium form of ownership under this Declaration of Condominium consists of that certain real property set forth in the attached Exhibit "A" together with those easements more specifically and particularly described in Article IV herein.

1.3 Additional Property. Developer shall have the sole right but not the obligation to bring within the scheme of this Declaration, as Additional Property, additional properties within the condominium plan at any time within five (5) years from the date this Declaration has been recorded, which annexation may be accomplished without the consent of the Association, its members, the Owners or occupants of the Condominium Property, any mortgage or lien holder, or anyone else. In the case that HUD, VA and/or FNMA holds, insures or guarantees any mortgages in such existing condominium, no additional property may be added to the existing condominium by developer without the prior written consent of said holder, insurer, and/or guarantor. Furthermore, all improvements on the property to be added must be substantially completed before such property is added to the existing condominium. Any Liens arising in connection with Developer's ownership of and construction of

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BILL ENGLISH, PROBATE JUDGE, LEE COUNTY

improvements upon the property to be added must not adversely affect the rights of the existing unit owners or the priority of first mortgages on units in the existing condominium property. Prior to the addition of the property, all taxes and assessments for the property to be added, must be paid or otherwise provided for by the Developer.

1.4 Method of Annexation. The additional property to be annexed under this Article shall be made by filing of record a Supplemental Declaration of Additional Property with respect to the additional property which shall extend the scheme of the covenants and restrictions of this declaration to such additional property. The Supplemental Declaration shall describe the real property to be annexed and shall state that it is being made pursuant to the terms of this Declaration for the purpose of annexing property to the scheme of this Declaration and extending the jurisdiction of the Association to the Additional Property.

Owners, upon recordation of any Supplemental Declaration shall also have a right and non-exclusive easement of use and enjoyment in and to the Condominium Property within the real property so annexed and an obligation to contribute to the operation and maintenance of such Condominium Property within the annexed lands.

Any Supplemental Declaration recorded in accordance with the terms herein shall be conclusive in favor of all persons who rely thereon in good faith. From and after recordation of any Supplemental Declaration, the Additional Property described in said Supplemental Declaration shall be subject to the provisions of this Declaration and to the jurisdiction of the Association.

1.5. Adjustment for Additional Property. If additional property is added, the voting rights, assessment obligations and the like shall be adjusted accordingly.

## ARTICLE II

### DEFINITIONS

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

2.1. Ad Valorem Real Estate Taxes shall mean those real property taxes assessed against the Units and their respective undivided interests in the Common Elements by the Tax Assessor for Lee County, Alabama.

2.2. Articles of Incorporation shall mean the Articles of Incorporation of the

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

2.3 Association shall mean The Southern Edge Condominium Association, Inc., a non-profit Alabama corporation, and its successors, which is responsible for the operation of the Condominium.

2.4 Association Property shall mean any real and personal property owned by the Association including, but not limited to, all furnishings, fixtures and other personal property contained within the Condominium Property that are not the property of an individual Owner.

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

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

2.7 Common Elements shall mean all of those items defined in Title 35, Chapter 8A, Ala. Code (1975) as Common Elements and those items hereinafter declared to be included within the Common Elements.

2.8 Common Expenses shall include:

a. Expenses of administration and management of the Condominium Property and of the Association including, but not limited to, compensation paid by the Association to a manager, accountant, attorney or other employee or independent contractor.

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

c. Expenses declared Common Expenses by the provisions of this Declaration or the Condominium Documents or Title 35, Chapter 8A, Ala. Code (1975).

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

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

f. All reserves for replacement and maintenance of the Condominium Property as required by Title 35, Chapter 8A, Ala. Code (1975).

Common Expenses shall not include Ad Valorem Real Estate Taxes assessed against each Condominium Parcel but shall include any and all taxes assessed against Association Property.

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

2.10. Condominium shall mean and refer to The Southern Edge Condominium.

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

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

2.13. Condominium Property means and includes the lands, leaseholds, easements and personal property including, but not limited to, the Common Elements that are subjected to condominium ownership from time to time as part of this Condominium, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with this Condominium.

2.14. Condominium Rules and Regulations shall mean and refer to the rules and regulations concerning the use of Condominium Property as may be promulgated and amended from time to time by the Association in the manner provided by its Articles of Incorporation and Bylaws. A copy of the initial Condominium Rules and Regulations are attached hereto as Exhibit D.

2.15. Declaration shall mean this Declaration of Condominium of The Southern Edge Condominium, as it may lawfully be amended from time to time, pursuant to the provisions hereof.

2.16. Developer shall mean The Southern Edge, LLC, an Alabama limited liability company, its successors and assigns. No party other than The Southern Edge, LLC, shall exercise the rights and privileges reserved herein to the Developer unless such party shall

receive and record in the Office of the Judge of Probate of Lee County, Alabama, a written assignment from The Southern Edge, LLC, of all or a portion of such rights and privileges.

2.17. Limited Common Elements means and includes those Common Elements which are reserved for the use of a certain Unit to the exclusion of other Units.

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

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

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

2.21. [Reserved]

2.22. Unit means a condominium unit as that term is defined in Title 35, Chapter 8A, Ala. Code (1975) and in Article V of this Declaration and refers to that part of the Condominium Property which is subject to exclusive ownership by one or more persons.

2.23. Utility Services shall include, but not be limited to, electric power, cable television, water, garbage and sewage disposal and telephone service, and all other public service and convenience facilities.

### ARTICLE III

#### EXHIBITS

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

3.1. Exhibit "A". A legal description and a survey of the initial land committed to the condominium form of ownership pursuant to this Declaration and comprising the Condominium Property as set forth in Article XX below, together with a graphic description of the Units located therein in a plot plan which, together with this Declaration, are of sufficient

detail to identify the Common Elements and each Unit and their relative locations and approximate dimensions. As set forth in Exhibit "A", each Unit is identified by a number so that no Unit bears the same designation as any other Unit.

- 3.2. Exhibit "B". The Articles of Incorporation of the Association.
- 3.3. Exhibit "C". The Bylaws of the Association.
- 3.4. Exhibit "D". Percentage Interest in the Common Elements
- 3.5. Exhibit "E" The Management Contract
- 3.6. Exhibit "F" The Condominium Rules and Regulations.

#### ARTICLE IV

##### EASEMENTS, LIENS, AND ENCUMBRANCES

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

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

a. Utilities. Easements are reserved over, across and under the Condominium Property as may be required for Utility Service in order to serve the Condominium adequately; including, but not limited to, easements for the purpose of allowing such access rights as are necessary to utilize and service any lift station or utility transformer boxes located within the Condominium Property. Specific utility easements that exist on the Condominium Property, if any, are set forth in Exhibit "A" attached hereto.

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

c. Traffic. An easement shall exist for pedestrian traffic over, through and across sidewalks, paths, walks, halls, lobbies and other portions of the Common Elements as may be from time to time intended and designated for such purpose and use; and for vehicular and pedestrian traffic over, through and across such portions of the Common

Elements as may from time to time be paved and intended for such purposes, and such easements shall be for the use and benefit of the Owners within this Condominium and those claiming by, through or under the aforesaid; provided, however, nothing herein shall be construed to give or create in any person the right to park any vehicle upon any portion of the Condominium Property except to the extent that space may be specifically designated and assigned for parking purposes. Further, easements shall exist for ingress and egress over such streets, walks and other rights-of-way serving the Units as shall be necessary to provide for reasonable access to the public rights-of-way.

4.2. Association Easements. Except as limited by Section Title 35, Chapter 8A, Ala. Code (1975) the Association may grant easements from time to time over the Common Elements.

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

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

b. Governmental Requirements. The Developer hereby reserves the right to grant such easements from time to time as may be required by any government agency. Such easements shall specifically include, but not be limited to, any environmental easements required by state or federal environmental agencies for so long as the Developer holds any interest in any Unit subject to this Declaration.

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

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

4.4. Other Easements, Liens, and Encumbrances. Other easements, if any, may have been granted over the Condominium Property as set forth in the survey contained in Exhibit "A" attached hereto. The Condominium Property also is subject to the following:

a. Mortgage executed by The Southern Edge, LLC to First American Bank dated April 7, 2005 and recorded April 7, 2005 in Mortgage Book 3198, Page 273, Office of the Judge of Probate for Lee County, Alabama.

b. Taxes and assessments for the year 2005 and subsequent years, not yet due and payable.

c. Subject to the right of way given by W. H. Pace and Mrs. W. H. Pace to the Alabama Highway Department, recorded August 1, 1939 at Deed Book 235 Page 470.

d. Subject to the right of way given by Leonard Hugh Pace, John Downer Pace, and Thomas Emil Pace to Dixie Pipeline Company, recorded December 27, 1961 at Deed Book 584 Page 385.

d. Subject to UCC Financing Statement recorded April 7, 2005, File No. 14128, in the Office of the Judge of Probate for Lee County, Alabama, U.S.A.

d. Subject to UCC Financing Statement recorded April 7, 2005, File No. 14128, in the Office of the Judge of Probate for Lee County, Alabama, U.S.A.

## ARTICLE V

### UNITS

5.1. Description of Units. Each Unit shall include that part of a building containing the Unit that lies within the boundaries of the Unit, which boundaries are as follows:

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

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

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



(3) Entry Elevations. Entry floor slab elevations at innermost unfinished surface of the exterior wall thereof are equal to the Unit floor slab elevation.

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

(1) Exterior Building Walls. The intersecting vertical plane(s) of the innermost unfinished surfaces of the exterior wall of the building bounding such Unit and as to the entry which is a part of a Unit. Such boundaries shall be the intersecting vertical planes which include all of such structures of the innermost unfinished surface of the exterior concrete floor slab thereof.

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

5.2. Limited Common Elements. Any porches, balconies or patios designed to serve single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit. The upkeep and maintenance of said limited common elements shall be the sole responsibility of the unit owner to which the limited common element is allocated for exclusive use.

5.3. Warranty Limitation. **EXCEPT FOR THOSE WARRANTIES REQUIRED BY TITLE 35, CHAPTER 8A, ALA. CODE (1975), THE DEVELOPER DOES NOT MAKE ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND THE DEVELOPER HEREBY DISCLAIMS ANY SUCH WARRANTIES INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND THE OWNERS AND THE ASSOCIATION ASSUME ALL RISK AND LIABILITY RESULTING FROM THE USE OF THIS PROPERTY.**

## ARTICLE VI

### APPURTENANCES

6.1. Appurtenant Interests. Each Unit shall have as an appurtenance thereto an

equal undivided share of the Common Elements and Common Surplus as more specifically described on Exhibit "D" attached hereto and by this reference incorporated herein. The Owner of each Unit shall be liable for that share of the Common Expenses which equals the percentage interest in the Common Elements and Common Surplus appurtenant to its Unit. The percentage interest set forth in Exhibit D is based on 56 in the Condominium. In the event the Condominium is expanded beyond 56 Units, the percentage interest of each Unit will be adjusted pro-ratably

6.2. Partition of Common Elements. The share of the undivided percentage interest in the Common Elements appurtenant to each Unit shall remain undivided, and no Owner shall bring, or have any right to bring, any action for partition or division of same.

## ARTICLE VII

### MAINTENANCE, ALTERATION AND IMPROVEMENT

Responsibility for the maintenance of the Condominium Property, and restrictions upon its alteration and improvement, shall be as follows:

7.1. Units. Common Elements.

a. By the Association. Unless caused by the specific abuse of an Owner or any licensee, guest or tenant of an Owner, the Association shall maintain, repair and replace at the Associations expense:

- (1) All Common Elements except as otherwise provided in the Condominium Documents.
- (2) All conduits, ducts, plumbing, wiring and other facilities for the furnishing of Utility Services.

b. By the Owner. The responsibility of the Owner for maintenance, repair and replacement shall be as follows:

- (1) To not paint or otherwise decorate or change the appearance of any portion of the Condominium Property without the prior written approval of the Association.
- (2) To promptly report to the Association upon discovery

any defect or need for repairs for which the Association is responsible.

(3) To bear in their entirety any expenses of repairs or replacements to the Condominium Property occasioned by the specific use or abuse by any Owner or any licensee, guest or tenant of said Owner.

(4) To maintain, repair and replace all components, furnishings, carpeting, appliances and other property, real, personal or mixed, located inside or comprising a Unit unless provided otherwise in the Condominium Documents.

7.2. Management Contract. The Association may enter into such management contracts from time to time as it deems necessary to engage the services of a management company to carry out all or part of the maintenance and operational duties and obligations of the Association in accordance with this Declaration. The initial Management Company is Porter Properties, LLC, pursuant to the terms of the Management Contract attached hereto as Exhibit E. In the event that the Management Contract is terminated, the maintenance duties and other obligations of the Condominium will once again be the responsibility of the Association. Any Management Contract must provide that at any time after turnover of control of the Association to Owners other than Developer, that the Association shall have the right, without penalty, to terminate the Management Contract upon not more than ninety (90) days advance written notice to the Management Company.

7.3. Association's Access to Units. The Association has the irrevocable right of access to each Unit whenever necessary for maintaining the Common Elements, for making emergency repairs necessary to prevent damage to the Common Elements or to another Unit and for servicing and reading utility lines, valves, conduits and meters.

7.4. Common Elements. The Association shall maintain, repair and replace all Common Elements except as otherwise provided in the Condominium Documents.

## ARTICLE VIII

### ASSESSMENTS AND COMMON EXPENSES

8.1. Common Expenses. In addition to those items defined as Common Expenses in Article 2.8 above, Common Expenses shall include the following:

a. Repair, replacement and upkeep of the Common Elements including, but not limited to, all storm water drainage and retention areas, recreational

facilities, driveways, sidewalks;

- b. Casualty and/or liability insurance on the Condominium Property and fidelity bonds;
- c. Utility Services for the Condominium Property not attributable to individual Units;
- d. Taxes on Association Property and any other applicable taxes other than Ad Valorem Real Estate Taxes assessed against individual Condominium Parcels; and
- e. Any other expenses incurred in the normal operation and maintenance of the Condominium which cannot be attributed to a particular Owner.

8.2. Assessments. The mailing and collection of assessments against each Owner for Common Expenses, for the costs or expenses for which an individual Owner may be solely responsible pursuant to the terms of the Condominium Documents, and for reserves as may from time to time be established by the Association, shall be pursuant to the Bylaws of the Association subject to the following provisions:

a. Interest: Application of Payments. Assessments and installments on such assessments paid on or before five (5) days after the date when due shall not bear interest, but all sums not paid on or before five (5) days after the date when due shall bear interest at the rate of 1.5% per month from the date when due until paid. A late charge equal to the greater of \$25.00 or 5% of the delinquent payment shall also be due on delinquent accounts. All payments on accounts shall be first applied to any interest that has accrued, then to any late charge, then to any costs and reasonable attorney fees incurred in collection, and then to the assessment payment first due. The board of directors shall have the discretion to increase or decrease the amount of late charge and/or interest rate within the limits imposed by law; provided, however, that such increase or decrease shall be made effective by amending the Condominium Rules and Regulations and notifying the Owners of same by regular mail addressed to each Owner at his last known address.

b. Lien for Assessments. The Association shall have a lien against each Condominium Parcel for any unpaid assessments which are due and which may accrue subsequent to the recording of the claim of lien and prior to the entry of a certificate of title, which lien shall also secure any interest, and all reasonable attorneys' fees and costs incurred by the Association incident to the collection process, whether or not legal proceedings are initiated. The lien is effective from and after recording a claim of lien, executed and acknowledged by an officer or authorized agent of the Association, in the Office of the Judge

of Probate of Lee County, Alabama, stating the legal description of the Condominium Parcel, the name of the Owner of record, the name and address of the Association, the amount claimed to be due and the due dates. The lien shall continue in effect until all sums secured by the lien shall have been fully paid or until such time as is otherwise permitted by law. Upon full payment, the party making payment shall be entitled to a recordable satisfaction of lien, to be prepared by and recorded at such party's expense. All such liens shall be subordinate to any mortgage recorded prior to the date of recording the claim of lien, and all such liens may be foreclosed by suit brought in the name of the Association in the same manner as a foreclosure of a mortgage on real property. The Association may also sue to recover a money judgment for unpaid assessments without thereby waiving any claim of lien. In the event a Mortgagee shall obtain title to a Condominium Parcel as a result of the foreclosure of its mortgage, or in the event such Mortgagee shall obtain title to a Condominium Parcel as the result of a conveyance in lieu of foreclosure of its mortgage, such Mortgagee shall be liable for the unpaid Common Expenses and assessments that became due prior to the Mortgagee's acquisition of title, except to the extent that such liability is limited by Title 35, Chapter 8A, Ala. Code (1975). Nothing contained herein shall be construed as a modification of any rights or remedies of the Association pursuant to Title 35, Chapter 8A, Ala. Code (1975), except to the extent that the Condominium Documents allow additional remedies to those expressly set forth in said statute and to the extent that such additional remedies are permitted by said statute.

c. Personal Liability for Unpaid Assessments. Each Owner of a Unit is personally liable for all assessments made against the Unit pursuant to this Declaration and Title 35, Chapter 8A, Ala. Code (1975), and the Association may bring an action for a money judgment against a delinquent Owner to collect all sums due the Association, including interest, late charges, costs and reasonable attorney fees. In the event a Unit is owned by more than one person or entity, such owners shall be jointly and severally liable for all assessments made against the Unit.

d. Payments of Assessments. No Owner may withhold payment of any regular assessment or special assessment or any portion thereof because of any dispute which may exist between that Owner and the Association, the directors of the Association, the Management Company or the Developer or among any of them but, rather, each Owner shall pay all assessments when due pending resolution of any dispute.

e. Notice of Delinquent Assessments. Any Mortgagee, upon written request to the Association (such request to state the name and address of such Mortgagee and the Unit number at issue), will be entitled to timely written notice of any delinquency in the payment of assessments or charges owned by an Owner of a Unit subject to the mortgage of such Mortgagee where such delinquency has continued for a period of sixty (60) days.

8.3. Common Surplus. Each Owner shall own a share of the Common Surplus attributable to each Unit owned in accordance with Section 6.1 above.

8.4. Refunds of Common Surplus. If the Association shall refund all or a portion of any Common Surplus to the Owners for any fiscal year in which the Developer paid any assessment, such refund shall be prorated as of the date of closing of any sale of a Unit upon which the sale was closed by the Developer during such year, and the prorated amount allocable to the period of time of the Developer's ownership shall be refunded directly to the Developer by the Association.

8.5. Certificate. Any Owner shall have the right to require from the Association a certificate showing the amount of unpaid assessments against him with respect to his Unit. The holder of a mortgage or other lien shall have the same right as to any Unit upon which it has a lien. Any person who relies upon such certificate shall be protected thereby.

## ARTICLE IX

### THE ASSOCIATION

The operation of the Condominium shall be by the Association, which shall fulfill its functions pursuant to the following provisions:

9.1. Membership in Association. Membership of each Owner in the Association shall be acquired pursuant to the provisions of the Articles of Incorporation and Bylaws of the Association. Each Unit shall have one (1) vote in the Association. Where a Unit is owned by more than one owner, the co-tenants of the Unit shall file a voting certificate with the Association, in accordance with the Articles and Bylaws of the Association, setting forth which cotenant is designated to cast the vote for that Unit.

9.2. Articles of Incorporation. A copy of the present Articles of Incorporation of the Association, which set forth its powers and duties, are attached hereto as Exhibit "B" and are incorporated herein by reference.

9.3. Bylaws. A copy of the present Bylaws of the Association are attached hereto as Exhibit "C" and are incorporated herein by reference.

9.4. Limitation Upon Liability of Association. Notwithstanding the duty of the Association to maintain and repair portions of the Condominium Property, the Association shall not be liable to Owners for injury or damage other than for the cost of maintenance and

repair, caused by any latent condition of the property to be maintained and repaired by the Association or caused by the elements or other Owners or persons.

9.5. Restraint upon Assignment of Shares and Assets. Each Owner's share in the funds and assets of the Association cannot and shall not be assigned, hypothecated or transferred in any manner except as an appurtenance to his Unit.

9.6. Transfer of Control of Association.

a. Owners of Units other than the Developer will be entitled to elect members of the board of directors of the Association as follows:

1) The Owners of Units other than the Developer shall be entitled to elect a majority of the members of the board of directors not later than the earliest of (i) 60 days after conveyance of 75 percent of the Units which may be created to Unit Owners other than Developer; (ii) two years after Developer has ceased to offer Units for sale in the ordinary course of business; or (iii) two years after any development right to add new Units was last exercised. Developer may voluntarily surrender the right to appoint and remove officers and members of the board before termination of that period, but in that event he may require, for the duration of the period of Developer control, that specified actions of the Association or board of directors, as described in a recorded instrument executed by the Developer, be approved by the Developer before they become effective.

2) Not later than 90 days after conveyance of 25 percent of the Units which may be created to Unit Owners other than Developer, at least one member and not less than 25 percent of the members of the board must be elected by Unit Owners other than the Developer. Not later than 90 days after conveyance of 50 percent of the Units which may be created to Unit Owners other than Developer, not less than 33 1/3 percent of the members of the board must be elected by Unit Owners other than the Developer.

3) Nothing in this subparagraph shall be construed so as to preclude the Developer from relinquishing control of the board of directors at any time the Developer may so elect.

b. The Developer is entitled to elect at least one member of the board of Directors of the Association as long as the Developer holds for sale in the ordinary course of business at least 5 percent of the Units in the Condominium operated by the Association.

c. Following the time the Developer relinquishes control of the Association, the Developer may exercise the right to vote any Developer-owned Units in the same manner as any other Owner except for purposes of requiring control of the Association or selecting the majority members of the board of directors.

9.7. Management Contract. As set forth in Article 7.2 above, the Association is authorized to contract for management of the Condominium and to delegate to such contractor all powers and duties of the Association except such as are specifically required by the Condominium Documents to have approval of the board of directors or members of the Association. A copy of the present agreement for the management of the Association with the Management Company is attached hereto as Exhibit "E". Notwithstanding any provisions contained in the Declaration to the contrary, it is the intent of this Declaration that the ability of the board of directors of the Association to independently terminate the Management Contract without a vote of the Owners as provided in Title 35, Chapter 8A, Ala. Code (1975) shall be governed solely by the terms and conditions of the Management Contract.

9.8. Availability of Documentation. The Association shall be required to make available to Owners, any Mortgagee and the holders and insurers of the first mortgage on any Unit, current copies of this Declaration, the Articles and Bylaws of the Association and other rules governing this Condominium and other books, records and financial statements of the Association. The Association also shall make available to prospective purchasers current copies of this Declaration, the Association Articles and Bylaws, other rules governing the Condominium and the most recent annual audited financial statement, if such is prepared. "Available" shall at least mean available for inspection upon request, during normal business hours or under other reasonable circumstances.

## ARTICLE X

### INSURANCE

The insurance other than title insurance, if any, that shall be carried upon the Condominium Property shall be governed by the following provisions:

10.1. Authority to Purchase: Named Insured. All insurance policies upon the Condominium Property shall be purchased by the Association from a fiscally responsible company authorized to do business in the State of Alabama and shall have a minimum term of one year. In selecting an insurance carrier, the Association shall refer to and comply with the criteria set forth in the FNMA Conventional Home Mortgage Selling Contract Supplement and the FHLMC Sellers Guide for specific requirements regarding the qualifications of insurance



carriers. The named insured shall be the Association individually and as agent for the Owners, without naming them, and as agent for their Mortgagees. Such policies shall provide that payments by the insurer for losses shall be made to the Association or the Insurance Trustee designated below, and all policies and their endorsements shall be deposited with the Association or the Insurance Trustee. Such policies shall also include a "condominium endorsement" which shall provide for recognition on any insurance trust agreement, waiver of the right of subrogation against Owners individually, that the insurance is not prejudiced by any act or neglect of individual Owners which is not in the control of such Owners collectively and that the policy is primary in the event the Owners have other insurance covering the same loss. Such policies shall also include, to the extent available and commonly required by prudent institutional mortgage investors in the area, an "Agreed Amount Endorsement", "Inflation Guard Endorsement" and/or "Demolition or Building Code Endorsement".

10.2. Personal Property of Owners. If desired, each Owner shall obtain insurance coverage upon his personal property at his own expense, and such insurance shall not be the responsibility of the Association.

10.3. Coverage.

a. Casualty. All buildings and improvements upon the Condominium Property shall be insured in an amount equal to one hundred percent (100%) of the current replacement cost, exclusive of land, foundation and excavation costs, and all other items normally excluded from coverage, and all personal property owned by the Association shall be insured for its current replacement cost, all as shall be determined from time to time by the board of directors of the Association. Coverage shall afford protection against:

(1) Loss or damage by fire and other hazards normally covered by a standard extended coverage endorsement;

(2) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the buildings on the Condominium Property, including floods and all other perils normally covered by the standard "all risk" endorsement where such is available, including, but not limited to, vandalism and malicious mischief.

b. Public Liability. Public liability insurance shall be carried in such amounts and with such coverage as shall be required by the board of directors of the Association from time to time; provided, however, that such coverage shall in no event be in an amount less than One Million (\$1,000,000.00) per occurrence. Wherever and whenever it is possible and economically feasible to do so, the board of directors shall attempt to obtain

adequate insurance protection in reasonably prudent coverages. Except as required herein, nothing in this Declaration shall be construed to require the board of directors to obtain such coverage as a condition precedent to the Association conducting business.

c. Worker's Compensation. Worker's compensation insurance shall be carried to the extent necessary to meet the requirements of law.

d. Fidelity Insurance. Fidelity insurance coverage shall be carried in the name of the Association for all officers, directors and employees of the Association and all other persons handling or responsible for funds of the Association. Where the Management Company has the responsibility for handling or administering funds of the Association, the Management Company 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. Such fidelity bonds shall name the Association as an obligee. The total amount of fidelity bond coverage required shall be in the amount required for each such officer, director or employee as set forth in Title 35, Chapter 8A, Ala. Code (1975), or in an amount not less than the estimated maximum of funds, including reserve funds, in the custody of the Association or Management Company, as the case may be, at any given time during the term of each bond, whichever is greater, but in no event may the aggregate amount of such bonds be less than a sum equal to three months' aggregate assessments on all Units plus reserve funds. The fidelity 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 "employees", or similar terms or expressions. The fidelity bonds shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days' prior written notice to the Association. Such bonds must also provide that any FNMA servicer, on behalf of FNMA, must also receive such notice of cancellation or modification.

e. Such other insurance may be carried as the board of directors of the Association shall determine from time to time to be desirable.

10.4. Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a Common Expense.

10.5. Insurance Trustee: Share of Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and any Mortgagees as their interests may appear and shall provide that all proceeds covering property losses shall be paid to the Association or to a named Insurance Trustee (the "Insurance Trustee") if the board of directors shall so elect. All references to an Insurance Trustee herein shall apply to the Association if the board of directors elects not to appoint an Insurance Trustee. Any Insurance Trustee appointed by the board of directors shall be a commercial bank with trust powers authorized to do business in Alabama or another entity acceptable to the

board of directors of the Association. The Insurance Trustee (other than the Association) shall not be liable for payment of premiums nor for the failure to collect any insurance proceeds. The duty of the Insurance Trustee shall be to receive such proceeds as are paid and hold the proceeds in trust for the purposes stated herein for the benefit of the Owners and any Mortgagees in the following shares; provided, however, that such shares need not be set forth on the records of the Insurance Trustee:

a. Proceeds on Account of Damage to Common Elements.

Proceeds on account of damage to Common Elements and shall be held in undivided shares for each Owner, such share being the same as the undivided share in the Common Elements appurtenant to each Unit.

b. Units. Proceeds on account of damage to Units when the

building or Unit is not to be restored shall be held in undivided shares for each Owner of those Units or Unit, such share being the same as the undivided share in the Common Elements appurtenant to each Owner's interest.

c. Mortgagees. Such insurance policies shall contain the standard

mortgage clause or equivalent endorsement (without contribution) which is commonly accepted by private institutional mortgage investors in the area in which the condominium is located and which appropriately names FNMA and FHLMC, if such corporations are Mortgagees. In the event a Mortgagee endorsement has been issued, any share for the Owner shall be held in trust for the Mortgagee and the Owner as their interests may appear; provided, however, that no Mortgagee shall have the right to determine or participate in the determination as to whether any damaged property shall be reconstructed or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions of such proceeds made to the Owner and Mortgagee pursuant to the provisions of this Declaration. Notwithstanding the foregoing, the Mortgagee shall have the right to apply or have applied to the reduction of its mortgage debt any or all sums of insurance proceeds applicable to its mortgaged interest in any of the following events:

(1) When its mortgage is not in good standing and is in default; or

(2) When insurance proceeds are insufficient to restore or repair the Unit to the condition existing prior to the loss and additional monies are not available for such purpose.

10.6. Distribution of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners of such

proceeds in the following manner:

a. All expenses of the Insurance Trustee shall be paid first or provisions made for such payment.

b. If the damage for which the proceeds are paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as provided herein. Any proceeds remaining after defraying such cost shall be distributed to the beneficial owners, remittances to Owners and any Mortgagees being payable jointly to them. This is a covenant for the benefit of, and may be enforced by, any Mortgagee.

c. If it is determined in the manner provided herein that the damage for which proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial owners, remittances to Owners and any Mortgagees being payable jointly to them. This is a covenant for the benefit of, and may be enforced by, any Mortgagee.

d. In making distribution to Owners and any Mortgagees, the Insurance Trustee may rely upon a certificate of the Association made by its president and secretary as to the names of the Owners and their respective shares of the distribution.

10.7. Association as Agent and Attorney-in-Fact. The Association is hereby irrevocably appointed agent and attorney-in-fact for each Owner to adjust all claims arising under the insurance policies purchased by the Association and to execute and deliver releases upon the payment of a claim.

10.8. Notice to Owners and Mortgagees. No insurance policy required by this Declaration may be canceled or substantially modified without at least ten (10) days' prior written notice to the Association and each Mortgagee holding a first mortgage and which is listed as a scheduled holder of a first mortgage in the policies. Certificates of insurance shall be issued to each Owner and Mortgagee upon written request therefor.

## ARTICLE XI

### RECONSTRUCTION OR REPAIR AFTER CASUALTY

11.1. Obligation to Reconstruct or Repair. If any part of the Condominium Property shall be damaged by casualty, whether or not it shall be reconstructed or repaired shall be determined in the following manner:

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a. Common Elements. If the damaged improvement is a Common Element then the damaged property shall be reconstructed or repaired unless it is determined that the Condominium shall be terminated because of damage to Units as set forth in Article 11.1(b) below.

b. Units.

(1) Minor Damage. If the damage is to Units and if less than fifty percent (50%) of the Units are found by the board of directors of the Association to be untenantable, the damaged property shall be reconstructed or repaired.

(2) Major Damage. If the damage is to Units and if fifty percent (50%) or more of the Units are found by the board of directors of the Association to be untenantable, then the damaged property will be reconstructed or repaired unless within sixty (60) days after the casualty, the holders of ninety percent (90%) of all of the votes of the Association agree in writing to not reconstruct or repair and to terminate the Condominium. Any election to terminate the Condominium after substantial destruction or a substantial taking in condemnation of the Condominium Property must have the prior approval of the Mortgagees holding first mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by Mortgagees are allocated.

c. Certificate. The Insurance Trustee may rely upon a certificate of the Association made by its president and attested by its secretary as to whether or not the damaged property is to be reconstructed or repaired.

11.2. Plans and Specifications. Any reconstruction or repairs must be substantially in accordance with the plans and specifications for the damaged property as originally constituted or, in lieu thereof, according to the plans and specifications approved by the board of directors of the Association. Any restoration or repair of the Condominium after a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original Condominium plans and specifications unless the approval of the Mortgagees holding first mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by such Mortgagees are allocated is obtained.

11.3. Estimates of Cost. Prior to rebuilding or repairing damage to property for which the Association has the responsibility of reconstruction and repair, the Association shall obtain reliable and detailed estimates of the cost to rebuild or repair.

11.4. Assessments. If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association or if at any time during

reconstruction and repair or upon completion of reconstruction and repair the funds from insurance for the payment of the costs of reconstruction and repair are insufficient, special assessments shall be made against all Owners in sufficient amounts to provide funds for the payment of such costs. Such special assessments shall be in proportion to the Owners' respective obligations for Common Expenses.

11.5. Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Association or the Insurance Trustee and funds collected by the Association through assessments against Owners, shall be disbursed in payment of such costs in the following manner

a. Association. If the total of assessments made by the Association in order to provide funds for the payment of costs of reconstruction and repair that are the responsibility of the Association is more than Fifty Thousand Dollars (\$50,000.00), then the sums paid upon such assessments shall be deposited by the Association with the Insurance Trustee (if other than the Association). In all other cases the Association shall hold the sums paid upon such assessments and disburse them in payment of the costs of reconstruction and repair.

b. Insurance Trustee. The proceeds of insurance collected on account of casualty and the sums deposited with the Insurance Trustee by the Association from collections of assessments 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:

(1) Association: Minor Damage. If the amount of the estimated costs of reconstruction and repair that is the responsibility of the Association is less than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be disbursed in payment of such costs upon the order of the board of directors of the Association; provided however, that upon request by a Mortgagee that is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner provided for the reconstruction and repair of major damage.

(2) Association: Major Damage. If the amount of the estimated costs of reconstruction and repair that are the responsibility of the Association is more than Fifty Thousand Dollars (\$50,000.00), then the construction fund shall be applied by the Insurance Trustee to the payment of such costs and shall be paid to or for the account of the Association from time to time as the work progresses but not more frequently than once in any calendar month. The Insurance Trustee shall make payments upon the written request of the Association for withdrawal of insurance proceeds, accompanied by a certificate dated not more than fifteen (15) days prior to such request, signed by an officer of the Association and by an

architect in charge of the work, who shall be selected by the Association, setting forth that the sum then requested either has been paid by the Association or is justly due to contractors, subcontractors, materialmen, architects or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials and any amounts paid prior to the request, and stating that the sum requested does not exceed the value of the services and material described in the certificate; that, except for the amount stated in such certificate to be due as aforesaid, there is no outstanding indebtedness known to the person signing such certificate after due inquiry which might become the basis of a vendor's, mechanic's, materialmen's or similar lien upon such work against the Common Elements or any Unit; and that the cost as estimated by the person signing such certificate of the work remaining to be done subsequent to the date of such certificate does not exceed the amount of insurance proceeds or other funds remaining in the hands of the Insurance Trustee after the payment of the sum so requested.

(3) Surplus. It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed to the beneficial owners of the fund; except, however, that only those portions of distribution to the beneficial owners in excess of assessments paid by an Owner to the construction fund shall be made payable to any Mortgagee.

(4) Certificate. Notwithstanding the provisions of this instrument, the Insurance Trustee shall not be required to determine whether sums paid by the Owners upon assessments shall be deposited by the Association with the Insurance Trustee, nor to determine whether the disbursements from the construction fund are to be upon the order of the Association or approval of an architect or otherwise, nor whether a disbursement is to be made from the construction fund, nor to determine the payee nor the amount to be paid. Instead, the Insurance Trustee may rely upon a Certificate of the Association made by its president and secretary as to any or all of such matters and stating that the sums to be paid are due and property payable and stating the name of the payee and the amount to be paid; provided, that when a Mortgagee is required in this instrument to be named payee, the Insurance Trustee shall also name the Mortgagee as a payee of any distribution of insurance proceeds to an Owner; and further provided, that when the Association or a Mortgagee that is the beneficiary of an insurance policy whose proceeds are included in the construction fund so requires, the approval of an architect named by the Association shall be first obtained by the Association prior to disbursements in payment of costs of reconstruction and repair.

11.6. Eminent Domain. The Association is hereby empowered to defend and/or settle any action or threatened action with respect to the taking in condemnation of any portion of the Common Elements or any Unit or portion of any Unit. Upon obtaining

knowledge of such action or threatened action, the Association shall notify all affected Mortgagees of record of same.

a. Common Elements. Any award or settlement made as a result of such a taking of all or a portion of the Common Elements shall be made payable to the Association. Any such award or settlement shall be held in trust by the Association for the benefit of the Owners and Mortgagees holding a first mortgage as their interests may appear. In the event any repair or restoration of the Common Elements is necessary in the opinion of a majority of the board of directors of the Association on account of such taking, or in the event a majority of the voting interests at a duly called and constituted meeting of the Association promptly approve such restoration or repair, the board of directors shall arrange for same and shall disburse such of the proceeds of such award or settlement as shall reasonably be necessary to effect such restoration or repair to the contractors engaged for such purpose in appropriate progress payments. The balance of such proceeds, or all of such proceeds if no determination to repair or restore is made, shall be disbursed by the Association in the same manner as insurance proceeds under Section 10.6 above where there is no repair or restoration of the damage.

b. Units. Any award or settlement for the taking in condemnation of a Unit shall be made payable to the Association for the benefit of the Owners thereof. In the event any repair or restoration of the Unit is necessary in the event a majority of the voting interests appurtenant to that Unit at a duly called and constituted meeting of the Association promptly approve such restoration or repair, the board of directors shall arrange for same and shall disburse such of the proceeds of such award or settlement as shall reasonably be necessary to effect such restoration or repair to the contractors engaged for such purpose in appropriate progress payments. The balance of such proceeds, or all of such proceeds if no determination to repair or restore is made, shall be disbursed by the Association as to the Owners of that Unit in the same manner as insurance proceeds under Section 10.6 above. If a temporary taking in condemnation of use (but not title) of a Unit occurs, the entire award or settlement for such temporary taking shall be paid to the Association for the benefit of the Owners of such Unit.

11.7. Notice to Mortgagees. Any Mortgagee, upon written request to the Association (such request to state the name and address of such Mortgagee and the Unit number at issue), will be entitled to timely written notice of any condemnation loss or any casualty loss which affects a material portion of the Condominium or which affects any Unit on which there is a first mortgage held, insured or guaranteed by such Mortgagee.

11.8. Consent Required for Reallocation of Interests in Common Elements. No reallocation of interests in the Common Elements resulting from a partial condemnation or

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partial destruction of the Condominium may be effected without the approval of the Mortgagees holding first mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by such Mortgagees are allocated.

## ARTICLE XII

### USE RESTRICTIONS

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

12.1. Subdivision of Units. No Unit may be divided or subdivided into a smaller Unit.

12.2. Common Elements. The Common Elements shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the personal use of the Owners, their guests and lessees and other authorized occupants of Units.

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

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

12.5. Bicycles and Motorcycles. Bicycles and motorcycles shall not be stored on the Condominium Property except in such areas as are designated for this purpose.

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

Incorporation and Bylaws. A copy of the present Condominium Rules and Regulations is attached hereto as Exhibit "D".

12.7. Developer's Use. The Developer, its agents or an entity affiliated with the Developer may make such use of the Common Elements and the Units as may facilitate the sale or rental of Units, including, but not limited to, showing of the property, maintaining a sales office within a Unit, maintaining a model Unit, and the display of signs and other promotional devices.

12.8. Antennas. No antennas of any type designed to serve a Unit shall be allowed on the Common Elements except as may be provided by the Association to serve as a master antenna for the benefit and use of the Condominium. No electrical or other equipment may be operated on the Condominium Property which interferes with broadcast or cable television signal reception.

### ARTICLE XIII

#### ALIENABILITY OF UNITS

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

13.2. Leasing and Rental Restrictions. Owners may lease or rent their Units in whole or in part for non-transient occupancy and no approval by the Association shall be necessary therefor. Owners shall be specifically permitted to rent portions of Units, it being the intention of Developer to permit the Owner to rent individual bedrooms within a Unit to separate and unrelated persons. However, all lessees, as well as guests of Owners, shall be required to abide by the terms and conditions of this Declaration, as well as all Rules and Regulations adopted by the board of directors of the Association from time to time. Owners are prohibited from leasing Units or portions thereof for an initial term of less than thirty (30) days.

### ARTICLE XIV

#### COMPLIANCE AND DEFAULT

14.1. Compliance and Default. Each Owner shall be governed by and shall comply with the terms of the Condominium Documents and the Condominium Rules and

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

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

14.3. No Waiver of Rights. The failure of the Association or any Owner to enforce any covenant, restriction or other provision of Title 35, Chapter 8A, Ala. Code (1975), the Condominium Documents or the Condominium Rules and Regulations shall not constitute a waiver of the right to do so thereafter.

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

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

consents and submits to and agrees that venue in any such suit or legal action is proper in said court and county, and each party hereby waives any and all personal rights under applicable law or in equity to object to the subject matter or personal jurisdiction and venue in said court and county. Such jurisdiction and venue shall be exclusive of any other jurisdiction and venue.

## ARTICLE XV

### AMENDMENTS

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

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

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

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

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

(a) change the configuration, boundaries or size of any Unit in any material fashion;

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

(c) materially amend any provision regulating assessments, assessment liens or subordination of liens;

(d) materially amend any provision regarding reserves for maintenance, repair and replacement of the Common Elements;

(e) materially amend any provision regarding insurance or fidelity bonds;

(f) materially amend any provision regarding the responsibility for maintenance and repair of the Condominium;

(g) materially amend any provision regarding expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium;

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

(i) establishes self-management by the Association where professional management has been required by any Mortgagee;

(j) which address the convertibility of Units into Common Elements or Common Elements into Units; or

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

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

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

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

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

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

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

No amendment to this Declaration unilaterally made by the Developer shall be permitted if such amendment would: (i) change the configuration, boundaries or size of any Unit in any material fashion; (ii) materially alter or modify the appurtenances to any Unit, including voting rights, rights to use Common Elements, interests in the Common Elements or the leasing of Units; (iii) which materially changes the proportion or percentage by which the Owners share the Common Expenses and own the Common Surplus; (iv) which materially amends any provision contained within this Declaration, the Association Articles or Bylaws regulating assessments, assessment liens or the subordination of liens, reserves for maintenance, repair or replacement of Common Elements; (v) which materially modifies the

responsibility for maintenance and repair of the Condominium Property; (vi) which materially modifies the provisions regarding expansion or contraction of the Condominium or the addition annexation or withdrawal of property to or from the Condominium; (vii) which addresses the convertibility of Units into Common Elements or Common Elements into Units; (viii) which imposes any right of first refusal or similar restrictions on the right to transfer or otherwise convey a Unit; (ix) which establishes self-management by the Association where professional management has been required by any Mortgagee; or (x) which materially amends any provision in this Declaration regarding insurance or fidelity bonds.

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

## **ARTICLE XVI**

### **TERMINATION**

The Condominium may be terminated in the following manners, in addition to the manner provided by Title 35, Chapter 8A, Ala. Code (1975):

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

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

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

upon being recorded in the Public Records of Lee County, Alabama.

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

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

## ARTICLE XVII

### VOTING RIGHTS

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

## ARTICLE XVIII

### MERGER

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



**ARTICLE XIX**

**SEVERABILITY**

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

**ARTICLE XX**

**DEVELOPMENT DESCRIPTION**

20.1. Description of Development. It is the intention of the Developer to develop the condominium in one phase in accordance with Title 35, Chapter 8A, Ala. Code (1975). The Condominium will consist of seven (7) two-story buildings containing eight (8) Units each. Each floor of the building will contain four (4) Units. Buildings 1, 4 and 7 shall contain only four (4) bedroom units. Buildings 2, 3, 5 and 6 shall each contain two (2) two bedroom units and two (2) three bedroom units per floor. Each floor will contain four (4) Units. The Condominium will also consist of a basketball court, a beach volleyball court, a swimming pool with pool deck, and a clubhouse.

<u># of Buildings</u>	<u>Est Date of Completion</u>
7	August 15, 2005

20.2. Amendment to Development. The Developer specifically reserves the right to amend this Declaration and Exhibit "A" attached hereto, without the approval of the Owners and consistent with Alabama law, to change the estimated completion dates of the Condominium (provided, however, the Condominium must be completed if declared within seven years of the date hereof), to add to any recreational facilities proposed and/or to change any of the items required to be included in this Declaration for any the Development by Section Title 35, Chapter 8A, Ala. Code (1975).

20.3. Recreational Areas, Facilities and Parking Spaces. The recreational areas, facilities and parking spaces located within the Condominium are described in the attached Exhibit "A". The Developer expressly reserves the right to add recreational facilities to the Condominium at the Developers cost as part of the development process and such recreational facilities will become part of the Common Elements of the Condominium and will

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be maintained by the Association at Association expense. As set forth in Paragraph 20.2 above, the Developer reserves the right to amend Exhibit "A" attached hereto to add any recreational facilities.

20.4 Notice. Any Notice from the Developer to the Condominium Owners shall be sent by regular mail addressed to each Owner at his last known address.

20.5. Minimum and Maximum Numbers and General Size of Units: Reservation of Right to Change Unit Size. Developer reserves the right to change the size and type of Units and the mix of Unit types at its sole discretion and without notice to Owners.

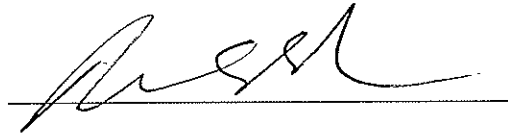
IN WITNESS WHEREOF, the Developer has executed this Declaration of Condominium on this 13 day of May, 2005.

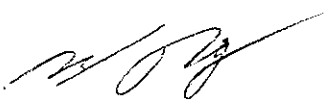
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LEE COUNTY

IN THE PRESENCE OF:

The Southern Edge, LLC  
By: University Housing Group, Inc.  
Its: Managing Member

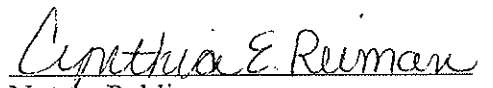
  
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By:   
Wesley C. Bradley  
Its: President

STATE OF VIRGINIA )  
COUNTY OF ROANOKE ) ss  
CITY

The undersigned notary public hereby certifies that Wesley C. Bradley whose name is signed to the foregoing instrument as an authorized officer of University Housing Group, Inc., Managing Member of The Southern Edge, LLC, and who is known to me, acknowledged before me this day, that being informed of and understanding the contents of same, that he executed the same voluntarily as such officer for and on behalf of The Southern Edge, LLC on the day the same bears date.

Given under my hand and seal on this 13<sup>th</sup> the day of MAY, 2005.

  
Notary Public  
My Commission Expires: 7-31-06

[seal]

**I was commissioned a Notary Public  
as Cynthia E. Dix.**

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