

**DECLARATION OF CONDOMINIUM**

**Of**

**THE VILLAS OF AUBURN,**  
a condominium

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THIS DECLARATION is made this 1st day of June, 2017, by RR Villas LLC, an Alabama limited liability company (the "Developer"), pursuant to the provisions of the Alabama Uniform Condominium Act of 1991, Code of Alabama 1975 §§ 35-SA-101 et seq. (the "Act"), for the purpose of forming a condominium and establishing certain easements, covenants and restrictions to run with the land:

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain real property located in the City of Auburn, Lee County, Alabama, more particularly described on Exhibit A attached hereto on which is located five buildings containing four (4) residential units each, except as otherwise provided in Section 2.02, and certain other improvements in accordance with the Plan of The Villas at Auburn, a condominium prepared by Foresite Group, Inc. on **May 9, 2017** and recorded in **Condo Plat Book 4, page 118** in the Office of the Judge of Probate of Lee County, Alabama, a copy of which is included in Exhibit C attached to this Declaration (the "Property" or "Condominium Property");

WHEREAS, it is the desire and intention of the Developer, by recording this Declaration, to establish a Condominium (as defined in the Act) to be known as "The Villas at Auburn", a condominium, under the provisions of the Act and to impose upon the real property covered hereby mutually beneficial restrictions under a general plan for the benefit of all of the condominium units contained therein and the owners thereof;

NOW, THEREFORE, Developer, upon recording hereof, does submit that certain real property situated in the City of Auburn, Lee County, Alabama, more particularly described on Exhibit A attached to this Declaration, together with the improvements thereon, and owned by the Developer in fee simple absolute to the provisions of the Alabama Uniform Condominium Act of 1991 to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, improved and in any other manner utilized subject to the provisions of said Act and subject to the covenants, conditions, restrictions, uses, rules, limitations and affirmative obligations set forth in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into condominium ownership and all of which shall run with the land and shall be binding on all parties (including Owners as hereinafter defined) having or acquiring any right, title or interest in said property or any part thereof, and shall be for the benefit of each Owner of any portion of said property or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest to the Owners thereof.

ARTICLE I

DEFINITIONS

1.01. **Definitions.** Certain terms as used in this Declaration shall be defined as follows, unless the context clearly indicates a different meaning therefor:

(a) "Act" shall mean the Alabama Uniform Condominium Act of 1991, Code of Alabama §§ 35-8A-101 et seq., as the same may be amended from time to time.

(b) "Association" shall mean Villas at Auburn Owners Association, Inc., a nonprofit corporation organized pursuant to the Alabama Nonprofit Corporation Act, Code of Alabama §§ 10-3A-1 et seq., of which all Owners shall be members and which corporation shall administer the operation, management, maintenance, control and administration of the Condominium Property.

(c) "Board of Directors" or "Board" shall mean the Board of Directors of the Association, elected pursuant to the By-Laws of the Association.

(d) "By-Laws" shall mean the set of By-Laws, a copy of which is attached hereto as Exhibit B, recorded simultaneously with this Declaration, providing for the self-government of the Condominium Property by the Association in accordance with § 35-8A-301 of the Act, and such amendments thereto as may be recorded from time to time pursuant to the provisions of the Act.

(e) "Common Elements" shall mean and include the following:

(i) The Land;

(ii) The foundations and footings, bearing walls, perimeter walls, structural slabs, exterior columns, beams and supports;

(iii) The roofs, and areas designated as common such as driveways and entrances and any private drives or roads;

(iv) The compartments or installations of central services such as central air conditioning, ventilation, heating, power, light, electricity, gas, fire protection, security, cold and hot water, plumbing, reservoirs, water tanks and pumps, sewer lines, flues, trash compactors, incinerators, and the like, and all similar devices and installations existing for common use, but excluding all compartments or installations of utilities and services which exist for private use in the Private Elements;

(v) The premises and facilities, if any, used for the maintenance or repair of the Property;

(vi) All common recreational facilities such as any yards and walkways;

(vii) Greens, gardens, roadways, yards, landscaping, and central mail boxes;

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

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

(f) "Common Expenses" shall mean the expenses arising out of the ownership of the Common Elements for which the Owners are liable to the Association and shall include, but not be limited to, expenses of administration of the Condominium Property; expenses of insurance; expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation and betterment of the Common Elements and any portion of a Unit maintained by the Association; any valid charge against the Condominium Property as a whole; and expenses declared to be Common Expenses by the provisions of the Condominium Documents, as the same may be amended, from time to time, in accordance with the provisions thereof. The Common Expenses shall not include charges imposed upon the Owners under the Condominium Documents for usage of various components of the Common Elements or Limited Common Elements.

(g) "Common Surplus" shall mean the excess of all the receipts of the Association including, but not limited to, assessments, rents, profits and revenues over the amount of the Common Expenses.

(h) "Condominium Documents" shall mean the Declaration of Condominium and all Exhibits hereto, the By-Laws, and the Articles of Incorporation of the Association, as the same shall be amended from time to time.

(i) "Declaration of Condominium" or "Declaration" shall mean this instrument and all Exhibits hereto as it may, from time to time, be amended.

(j) "Developer" or "Declarant" shall mean RR Villas LLC, an Alabama limited liability company, its successors and assigns, other than an Owner, who shall receive by assignment from the said Developer all, or a portion of its rights hereunder as such Developer, by an instrument expressly assigning such rights as Developer to such assignee.

"Developer Control Period" shall mean the period of time until Developer sells the last available unit in the Condominium Property.

(k) "Land" shall mean the parcel or tract of real estate described in Exhibit A to this Declaration, submitted to the provisions of the Act, and such other parcels or tracts of real estate as may be submitted to the provisions of the Act by amendment of this Declaration.

(l) "Limited Common Elements" shall mean and include any area designated as Limited Common Elements on the Plan and any amendment to the Plan and any areas defined in the Act as Limited Common Areas. The Limited Common Elements shall include among any other property so designated flues, wires, conduit, bearing walls, bearing columns or any other fixture serving only that Unit. Should any Limited Common Element ever be determined not to be a Limited Common Element under the Act, the same shall be part of the Common Elements with an exclusive easement of use appurtenant to the Private Elements to which it was originally assigned as a Limited Common Element.

(m) "Limited Common Expenses" shall mean the expenses arising out of the ownership of the Limited Common Elements for which the Owners of the Limited Common Elements may be liable to the Association on a pro rata basis should the Association decide to make such assessment. The Association may combine the Limited Common Expenses with the Common Expenses and assess the Limited Common Expenses the same as Common Expenses. Limited Common Expenses shall include, but not be limited to, the expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation, and betterment of the Limited Common Elements; and expenses declared to be Limited Common Expenses by the provisions of the Condominium Documents, as the same may be amended, from time to time, in accordance with the provisions thereof.

(n) "Mortgage" shall mean a first lien Mortgage on one or more Units.

(o) "Mortgagee" shall mean a holder of a Mortgage who has given notice to the Association that it is the holder of a Mortgage affecting all or any part of the Condominium Property as hereinafter provided.

(p) "Owner" or "Unit Owner" shall mean and refer to every person or entity who is a record owner of a Unit.

(q) "Plan" or "Plat" shall mean the as-built Map showing the Private Elements, the Common Elements and the Limited Common Elements of the Condominium Property attached hereto as Exhibit C, and made a part hereof for all purposes, as such Map may from time to time be amended.

(r) "Private Elements" shall mean the parts of the Condominium Property as set forth in the Plan intended for the exclusive ownership and possession by an Owner. Each Private Element is identified in a diagrammatic floor plan as shown on the Plan and shall consist of the volumes or cubicles of space which lie between the lower, upper and lateral or perimetrical boundaries described as follows:

(i) Upper and Lower Boundaries: The upper and lower boundaries extended to the planer intersections with the perimetrical boundaries as follows:

(1) The upper boundary shall be the plane of the lower unfinished surface of the ceiling;

(2) The lower boundary shall be the plane of the upper surface of the subflooring material which serves as the Unit's floor, excluding any floor covering such as carpeting, vinyl, hardwood or ceramic tile.

(ii) Perimetrical Boundaries: The perimetrical boundaries shall be the vertical planes of the exterior surfaces of the exterior windows, glass doors and entry doors, and the unfinished interior surfaces of the exterior walls, excluding paint, wallpaper and light coverings, extended to their planer intersections with each other and with the upper and lower boundaries. Each Private Element or Unit shall include all non-structural interior partition walls located within the boundaries of the Private Element except such part as may comprise part of the Common Elements; the decorated surfaces of all boundary walls, ceilings and floors, including wallpaper, paint, interior brick surface, lathe, wallboard, plaster, carpeting, flooring and other finishing materials; all immediately visible fixtures, appliances, kitchen cabinets, and water and sewage pipes located within the boundaries of the Private Element and serving only the Private Element; and the mechanical systems and installations providing electrical power, gas, water, heating and air conditioning service to the Private Element, including the individual compressor even though such equipment may be located outside the boundaries of the Private Element, provided that no pipes, wires, conduits, ducts, flues, shafts and other facilities situated within such Private Element and forming a part of any system serving one or more other Private Elements or the Common Elements shall be deemed to be a part of such Private Element; and provided further that no bearing wall providing structural support and located within the boundaries of the Private Element shall be deemed part of the Private Element.

(s) "Property" or "Condominium Property" shall mean the Land and all improvements and structures erected, constructed or contained therein or thereon, including all buildings, and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners, submitted to the provisions of the Act under this Declaration, as amended from time to time.

(t) "Rules and Regulations" shall mean those Rules and Regulations adopted from time to time by the Board of Directors of the Association that are deemed necessary for the enjoyment of the Condominium Property, provided they are not in conflict with the Act or the Condominium Documents, the initial copy of which are attached hereto as Exhibit "Z".

(u) "Unit" or "Condominium Unit" shall mean the Private Elements as shown on the Plat together with the undivided interest in the Common Elements and the Limited Common Elements, if any, assigned to each Unit as herein provided.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

2.01. **Description of Improvements and Identification of Units.** The Condominium Property shall consist of five (5) residential buildings with four (4) individual units each, labeled Buildings 1 to 5 and units 101, 102, 103, 104, 201, 202, 203, 204, 301, 302, 303, 304, 401, 402, 403, 404, 501, 502, 502, & 504. The Condominium Property shall be subject to the provisions of Section 2.02 below. A plat of the Land and improvements thereon and a graphic description of the improvements in which the Units are located, identifying each Unit by a number so that no Unit bears the same designation as any other Unit, all in sufficient detail to identify the Common Elements, the Limited Common Elements and each Unit and their relative locations and approximate dimensions, are set forth in the Plan attached hereto as Exhibit "C".

2.02. **Amendment of Condominium Plan.** Developer reserves the right, without any consent of another party including any Owner, to change the interior design, floorplan and arrangement of all Units, to alter the boundaries between Units, including the right to subdivide or combine Units, and to increase or decrease the number of Units so long as the Developer owns the Units so altered. Changes in the boundaries between Private Elements, as hereinbefore provided, shall be reflected by an amendment to the Plan, and if necessary, an amendment to this Declaration. An amendment to the Plan or the Declaration reflecting an alteration of the boundaries of the Units owned by Developer need be signed and acknowledged *only* by the Developer and need not be approved by the Owners and Mortgagees, whether or not such approval may elsewhere be required herein.

2.03. **Parking Space Designations.** There shall be no designation of a parking space associated with any particular Unit. However, the Association reserves the right to make such designations at some future point. Each unit shall have driveway access to its garage and no Owner shall destroy or impede the access of any other Owner to their unit's garage if any portion of the driveway is shared with another unit.

2.04. **Patios.** Each Unit Owner shall be entitled to an exclusive easement for the use of any exterior patio (covered) directly accessible from his Unit, but such right shall not entitle an Owner to construct any patio extension, addition or anything thereon or to change any structural part thereof. Board approval is required for any such change. The patio or terrace, if existing at the time of purchase by the Unit owner, shall be deemed to be a Limited Common Element appurtenant to the Unit from which it is directly accessible.

2.05. **Construction Activities.** Declarant shall have the right to conduct construction activities on the Project until such time as the Units are complete. In connection with such activities, Declarant may use portions of the Project for construction staging, storage of construction materials, operation and storage of construction equipment, and construction administration related to alterations, additions or improvements being made to the Units.

2.06. **Easements and Restrictions.** The Private Elements, Common Elements and Limited Common Elements shall be, and the same are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established in the Condominium Documents governing the use of said Private Elements, Common Elements and Limited Common Elements in setting forth the obligations and responsibilities incident to ownership of each Unit and its appurtenant undivided interest in the Common Elements or Limited Common Elements. Said Private Elements, Common Elements and Limited Common Elements are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the Condominium Property, which easements and restrictions are

described on Exhibit F attached hereto.

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

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

(c) Easements for Ingress and Egress. The Common Elements and Limited Common Elements shall be, and the same are hereby declared to be subject to a perpetual, nonexclusive easement over all roads, walkways and other common areas in favor of all Owners for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners, subject to all restrictions in the Condominium Documents.

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

(e) Easements for Encroachments. To the extent that any Private Element or Common Element or Limited Common Element encroaches on any other Private Element, Common Element, or Limited Common Element, whether by reason of any deviation from the Plan in the original construction, repair, renovation, restoration or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement shall exist for the encroachment and/or the maintenance of the same, so long as the encroaching Private Element, Common Element or Limited Common Element stands. A valid easement shall not relieve an Owner of liability for his or his agent's negligence or intentional acts in cases of willful and intentional misconduct by him or his agents or employees. In the event any Unit, any adjoining Unit, or any adjoining Common Elements or Limited Common Elements shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then constructed, reconstructed or repaired, encroachment of parts of the Common Elements or Limited Common Elements upon any Unit or of any Unit upon any other Private Elements, Common Elements or Limited Common Elements resulting from such construction, reconstruction or repair shall be permitted, and valid easements for such encroachment and the maintenance thereof shall exist so long as the encroaching improvements shall stand.

(f) Easement of Support. Each Private Element and the Common Elements and Limited Common Elements shall have an easement of support from every other Private Element and the Common Elements which provide such support.

(g) Easement for Use of Limited Common Elements. Each Owner of the Limited Common Elements shall have an easement for the repair, maintenance and upkeep of the Limited

Common Elements and for vehicular and pedestrian ingress and egress to and from the Limited Common Elements for so long as the Limited Common Elements exist. The aforesaid easement shall be for the benefit of each Owner of the Limited Common Elements and its lessees, licensees and invitees.

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

2.07. **Ownership of Common Elements.** Each Owner shall own an undivided interest in the Common Elements with all other Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as herein provided, without hindering, disturbing or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run along with the Unit. The extent or amount of such ownership shall be expressed by a percentage relating to each Unit and shall remain constant, unless changed in accordance with the provisions of Section 2.02 hereof or, by the approval of 75% of Owners. The percentage ownership in the Common Elements relating to each Unit is as set forth on Exhibit D attached hereto.

2.08. **Ownership of Limited Common Elements.** The ownership of the Limited Common Elements shall be as set forth on Exhibit D attached hereto. The extent or amount of such ownership shall be expressed by a designation or description of the Limited Common Elements which are appurtenant to a given Unit, and the Owners of such Units shall have the exclusive right to use such Limited Common Elements so designated or described unless changed by the Developer as permitted in Section 2.02 hereof or by the approval of 75% of the Owners of the Limited Common Elements. Each Owner of a Unit to which the Limited Common Element is attached shall have the right to use the Limited Common Element for all purposes incident to the use and occupancy of his Unit as herein provided without hindering, disturbing or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run along with the Units to which the Limited Common Elements are attached.

### ARTICLE III

#### ORGANIZATION AND MANAGEMENT

3.01. **Management of the Condominium Property.** Operation and administration of the Condominium Property shall be performed by Villas at Auburn Owners Association, Inc., an Alabama nonprofit corporation. The powers and duties of the Association shall include those set forth in the Act, the Alabama Nonprofit Corporations Act, Code of Alabama 1975 §§ 10-3A1 et seq., this Declaration, the Articles of Incorporation and the By-Laws.

3.02. **Members.** The members of the Association shall consist of all record Owners of the Units. Change of membership in the Association shall be established by recording in the public records of Lee County, Alabama, the deed or other instrument establishing record title to a Unit of the Condominium



Property, and the delivery to the Association of a certified copy of such instrument, the Owner designated by such instrument thereby becoming a record Owner and a member of the Association. Membership of the prior Owner shall thereby be terminated. All present and future Owners, tenants and occupants of the Units shall be subject to and shall comply with the provisions of the Declaration, the By-Laws and the Rules and Regulations, as the same may be amended from time to time. The votes for a Unit shall be cast by the record Owner thereof or the duly authorized proxy of the record Owner in the manner provided in the By-Laws. Each Unit Owner is entitled to the number of votes for each Unit owned by him as set forth in Exhibit D attached hereto. In the case of multiple record owners of a unit, one vote per unit will be allowed. Shall multiple record owners of any unit fail to agree as to how to cast their vote, their vote shall then be considered a non-vote and the total number of unit owners needed to calculate necessary percentages of votes in favor and against shall be reduced by the number of non-votes. (As an example, if 20 units exist and 2 units have multiple record owners who conflict on which way to vote, then the total number of votes (20) shall be reduced by the 2 non-votes to 18. To achieve 75% approval, 14 “yays” would then be necessary).

3.03. **By-Laws.** The By-Laws of the Association shall be in the form attached as Exhibit B to this Declaration, and may be amended from time to time as set forth therein.

## ARTICLE IV

### ASSESSMENTS

4.01. **Liability, Lien and Enforcement.** The Association is given the authority to administer the operation and the management of the Condominium Property, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Units. To provide the funds necessary for such proper operation, the Association is hereby granted the right to make, levy, and collect annual assessments against the Owners of all Units to pay Common Expenses and such other expenses which the Association is authorized to incur under the terms and conditions of this Declaration. The Association is also authorized to make, collect and levy assessments against Unit Owners for reimbursement of expenses the Association is caused to incur by reason of any act of the Unit Owner, his family members, guests, invitees or tenants for damages of any nature and for penalties for rules violations. In furtherance of said grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation and management of the Condominium Property, the following provisions shall be effective and binding upon the Owners of all Units.

#### 4.02. **Assessments.**

(a) All Assessments for the payment of Common Expenses shall be levied annually against the Owners of all Units, and unless specifically otherwise provided for in this Declaration, each Owner of a Unit and his Unit shall bear a percentage share of such assessment as corresponding to its pro rata share of the expense (5% per unit). The assessments for Common Expenses shall be payable over the course of the year in *advance* monthly installments commencing on the date of purchase of a Unit or in such other installments and at such times as may be determined by the Board of Directors of the Association. Each Owner will also pay to the Association a one-time initiation fee of \$275.00 upon becoming an Owner of any unit.

(b) Assessments for the payment of Limited Common Expenses may be levied against the Owners of those Units to which the Limited Common Elements are appurtenant if the Board of

Directors determines that it is the most equitable method of assessment for Limited Common Expenses. The Limited Common Expenses may also be included in Common Expenses and assessed in the same proportion as Common Expenses if the Board of Directors chooses this method of assessment. The assessments for Limited Common Expenses, if any, shall be payable in such installments and at such times as may be determined by the Board of Directors of the Association.

(c) The Association may assess the Owners of Units for the repair and maintenance of various components of the Common Elements and reserved therefore based on the usage of any component of the Common Elements. Such assessments may or may not be included in the assessment for Common Expenses, but be payable in such manner and at such times as may be determined by the Board of Directors of the Association.

(d) The Association may assess the Owners of Units for the reimbursement of any deductibles incurred for any insurance claims made by the Association. Such assessments may or may not be included in the assessment for Common Expenses, but be payable in such manner and at such times as may be determined by the Board of Directors of the Association.

(e) The Association may assess the Owner of Units for any legal, accounting, court or other professional fees incurred in the operation of the Condominium Property or the Association. Such assessments may or may not be included in the assessment for Common Expenses, but be payable in such manner and at such times as may be determined by the Board of Directors of the Association.

(f) The Association may assess the Owners of Units for all other ordinary, necessary and reasonable expenses that the Board sees fit to assess. Such assessments may or may not be included in the assessment for Common Expenses, but be payable in such manner and at such times as may be determined by the Board of Directors of the Association.

4.03. **Annual Budget.** Within sixty (60) days prior to the beginning of each calendar year, the Board of Directors of the Association shall adopt a proposed annual budget for such calendar year, and such budget shall project the amount of funds for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium Property, including reasonable allowances for contingencies and reserves therefore, in accordance with the Act and this Declaration. Said budget shall take into account any projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. Within thirty (30) days after adoption of such annual budget by the Board of Directors of the Association, copies of said budget shall be made available to each Unit Owner and the Board shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after delivery of the budget to the Unit Owners. Unless at the meeting a majority of the Unit Owners are present in person or by proxy and they reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected the budget for the last year shall continue in effect until such time as a new budget is ratified. If the budget is ratified the assessment for said year shall be established based upon such budget. This requirement shall not apply to Developer unless Developer has turned over its rights to the Unit Owners and the Board.

Should the Board of Directors at any time determine in the sole discretion of said Board of Directors that the assessments levied are or may prove to be insufficient for any reason including emergencies and non-payment of any Owner's assessment, the Board of Directors shall have authority to

levy such additional assessments as it shall deem necessary in accordance with the applicable provisions of the Condominium Documents and the Act. The initial projected and estimated annual maintenance budget for the Condominium Property is attached to the Declaration as Exhibit E.

4.04. **Omission of Assessment.** The omission by the Association, before the expiration of any year, to fix the assessments for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed. Any Unit Owner who fails to pay any assessment due hereunder shall incur a late penalty of \$25 each month until such assessment is paid in full.

4.05. **Detailed Records.** The Association shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Elements, specifying and itemizing the maintenance and repair expenses of the Common Elements, Limited Common Elements and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by any Owner or his representative at convenient hours of weekdays in the county where the Condominium Property is located.

4.06. **Payment of Common Expenses and Limited Common Expenses By Unit Owners.** All Unit Owners shall be obligated to pay any assessment for Common Expenses and Limited Common Expenses adopted by the Board of Directors pursuant to the terms of this Article IV. No Unit Owner may exempt himself from liability for his contribution toward Common Expenses or Limited Common Expenses by waiver of the use or enjoyment of any of the Common Elements, Limited Common Expenses or by abandonment of his Unit. No Unit Owner shall be liable for the payment of any part of the Common Expenses or Limited Common Expenses assessed against his Unit subsequent to a sale or other conveyance by him of such Unit. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter up to the time of conveyance without prejudice to the purchaser's right to recover from the selling Unit Owner the amounts paid by the purchaser therefor. Whenever any Unit may be sold or mortgaged by the Owner thereof, which sale shall be concluded only upon compliance with the other provisions of this Declaration, the Association upon written request of the Owner or purchaser of such Unit shall furnish to the Owner, the purchaser or any proposed Mortgagee (within the time period prescribed by the Act) a statement verifying the status of the payment of any assessment which shall be due and payable to the Association by the Owner of such Unit and the other information required by the Act. Any purchaser or proposed Mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction and the Association shall be bound by such statement. In the event that a Unit is to be sold or mortgaged when any assessment is outstanding against the Owner of such Unit and such assessment due the Association is in default, the purchase or mortgage proceeds shall first be applied by purchaser or Mortgagee to the payment of any delinquent assessment or installment due the Association before application of the payment to the selling Unit Owner.

4.07. **Default in Payment of Assessments.**

(a) The payment of any assessment or installment thereof due the Association shall be in default if such assessment or any installment thereof is not paid to the Association on or before the due date for such payment. When in default, the delinquent assessment or delinquent

installment due the Association shall bear interest at the maximum legal rate or 12%, whichever is greater, and be subject to a \$25 per month late fee until such delinquent assessment or installment and all interest due thereon has been paid in full. The Association shall have a lien against Units for delinquent assessments. Said lien shall secure and does secure the monies due for all assessments then or thereafter levied against the Owner of each Unit, and such lien shall also secure interest, if any, which may be due on the amount of any delinquent assessment owing the Association. Said lien shall also secure all costs and expenses, including late penalties and reasonable attorneys' fees, court costs, recording fees and expenses incurred by the Association in collecting delinquent assessments and enforcing the lien upon said Unit and its appurtenant undivided interest in the Common Elements or Limited Common Elements. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages in the State of Alabama but the Association shall give reasonable advance notice of its proposed action to the Unit Owner, the Mortgagee and all other lienholders of record of the Unit by delivering a copy of such notice to any unit owner or posting the same to the front door. The lien granted to the Association shall further secure such advances for taxes and payment on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to protect and preserve its lien, and the Association shall further be entitled to interest at the maximum legal rate on judgments or 12%, whichever is greater, and a late fee of \$25 per month on any such advance made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit or who may be given or acquire a mortgage, lien or other encumbrance thereon are hereby placed on notice of the lien rights granted to the Association and shall acquire such interest in any Unit expressly subject to the lien. The Board shall have the authority to waive all or a portion of any late fee or interest due to the Association.

(b) The lien herein granted to the Association shall be effective from and after the time of recording in the Probate Office of Lee County, Alabama this Declaration and no further recordation of any claim of lien for assessment under this section is required. Such lien shall include only assessments which are due and payable when the action to enforce the lien is commenced plus late penalties and penalties imposed by the Association for Rules and Regulations violations, interest, costs, reasonable attorneys' fees, recording fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided.

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

## **ARTICLE V**

### **MAINTENANCE AND OPERATION OF THE CONDOMINIUM PROPERTY**

5.01. **The Association's Obligation to Repair.** The Association acting through the Board of Directors shall be responsible for the maintenance, repair and replacement of the following, the cost of

which shall be charged to all Unit Owners as a Common Expense:

(i) The Common Elements, which by definition excludes floors, ceilings, entrance doors, and windows of a Unit and the surfaces of all interior walls and load bearing columns. The Association acting through the Board of Directors shall be responsible for the maintenance, repair and replacement of the Limited Common Elements, the cost of which shall be charged to all Unit Owners to which said Limited Common Elements being maintained, repaired or replaced attach either as a Common Expense or a Limited Common Expense in the discretion of the Board of Directors.

This Section 5.01 shall not relieve a Unit Owner of liability for damage to the Common Elements, Limited Common Elements, a Unit of another person, adjacent property or any other property caused by the Unit Owner, his family members, guests, invitees, lessees or licensees as a consequence of the negligence, recklessness, act or omission, or willful misconduct of such person. The cost of repair for any damage so caused by the Unit Owner, his family members, guests, invitees, lessees or licensees, shall be a special assessment against only the Unit Owner(s) responsible therefor.

5.02. Each Owner's Obligation to Repair.

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

- (i) The fixtures and equipment in his Unit, including the refrigerator, stove and
  - (ii) Incidental damage caused to a Unit by any work done by the Association;
- and
- (iii) Portions of the Units contributing to the support of the building, including

all other appliances within the Unit; drains, sinks, plumbing and plumbing fixtures and connections within the Unit; electrical panels, wiring, outlets and electric fixtures within the Unit; interior doors, garages, window frames and windows, screening and glass; all exterior doors, except the painting of the exterior faces of the exterior doors and windows which shall be the responsibility of the Association; all wall coverings including paint, wallpaper and light coverings; and all flooring including carpeting, vinyl, hardwood and ceramic tile within a Unit.

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

(b) Each Unit Owner agrees as follows:

(i) To perform all maintenance, repairs and replacements which are his obligations under subparagraph (a) of this Section 5.02;

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

(iii) Not to make, or cause to be made, repairs to any plumbing, heating, ventilation or air conditioning systems located outside his Unit but required to be maintained by him under subparagraph 5.02(a)(ii) except by licensed plumbers or licensed electricians or licensed contractors or subcontractors authorized to do such work by the Association or its delegate;

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

(v) Not to make any alteration, addition, improvement, decoration, repair, replacement or change to the Common Elements, Limited Common Elements, or to any outside or exterior portion of the Unit, excluding any alteration or additions made pursuant to the procedure described in subparagraph (iv) above and including, but not limited to, altering in any way exterior windows, façade, gutters, landscaping, plumbing, electrical fixtures, walls, faces or doors, affixing shutters to windows or painting any part of the exterior part of his Unit, affixing signage or decorations (with the exception of holiday decorations beginning after Thanksgiving and ending on January 5<sup>th</sup> each year) without the prior written consent of the Association; provided that if such consent is granted, the Unit Owner shall use only a contractor approved by the Association, who shall comply with all Rules and Regulations with respect to the work which may be adopted by the Association and the Unit Owner shall be liable for all damages to another Unit or to the Common Elements or Limited Common Elements caused by any contractor employed by such Unit Owner or by the subcontractors or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise; and

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

(c) The Association shall be obligated to answer any request by a Unit Owner for any required approval of a proposed addition, alteration or improvement (by painting or otherwise) within twenty-five (25) days after such request, but its failure to do so within the stipulated time shall not constitute a consent of the Association to the proposed addition, alteration or improvement. Any failure by the Association to respond to the request shall result in the applying Unit Owner's right to schedule a meeting before the Board within 15 business days after the Association's failure to respond. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any Unit shall be executed by the

Association, without, however, it incurring any liability on the part of the Board of Directors or any of them or the Association to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim of injury to a person or damage to property arising therefrom. The Unit Owner making any such addition, alteration or improvement shall be responsible for advancing the Association all necessary fees to obtain any such permits or licenses. The review by the Association under this Section 5.02 shall in no way make the Association liable for any alterations, additions, or improvements by any Unit Owner. Rather, such review is for purposes of aesthetics and control only. The provisions of this section shall not apply to Units owned by the Developer until a deed for such Unit has been delivered to a purchaser other than Developer.

5.03. Alterations, Additions and Improvements by the Association. Except in the case of loss or damage to the Common Elements or Limited Common Elements as contemplated by Article VIII of the Declaration, the Association shall not make any material structural alterations, capital additions or capital improvements to the Common Elements or Limited Common Elements (other than for the purpose of replacing, restoring or rehabilitating portions of the Common Elements or Limited Common Elements which is in accordance with the Declaration and which does not require expenditures of more than \$15,000, exclusive of any funds applied from the reserves maintained hereunder) unless the same is authorized by the Board of Directors of the Association and ratified by the affirmative vote of the voting members casting not less than 50 % of the total votes of the members of the Association present at any regular or special meeting of the Unit Owners called for that purpose at which a quorum is present. The cost of the foregoing shall be assessed against the Owners of Units as provided in Article IV hereof except as otherwise provided in this Section 5.03. Where any alterations or additions as aforesaid are exclusively or substantially exclusively for the benefit of the Unit Owners requesting the same, then the cost of such alterations or additions shall be assessed against and collected solely from the Unit Owners exclusively, or substantially exclusively, benefiting therefrom, and the assessment shall be levied in such proportions as may be determined to be fair and equitable by the Board of Directors of the Association. Where such alterations or additions exclusively, or substantially exclusively, benefit Unit Owners requesting the same, said alterations and additions shall be made only when authorized by the Board of Directors and ratified by not less than 50% of the total votes of the Unit Owners exclusively, or substantially exclusively, benefiting therefrom. Alterations, improvements or repairs of an emergency nature may be made upon authorization by a vote of the majority of the Directors available for consultation if the same is necessary and in the best interest of the Unit Owners.

5.04. Utilities. Each Unit Owner shall be required to pay all charges for utilities, including electricity, gas, cable television, and telephone service, used or consumed in his Unit. The utilities serving the Common Elements only shall be separately metered and paid by the Association as a Common Expense. The Association shall have authority to pay the cost of the utilities used or consumed in the Units and have the costs thereof apportioned among the Units based upon the Common Expense liability, use of the utility, or any other formula the Association may deem appropriate.

## **ARTICLE VI**

### **RESTRICTIONS ON USE OF UNITS, COMMON ELEMENTS AND LIMITED COMMON ELEMENTS**

6.01. Rules and Regulations of the Association. The Association is authorized to promulgate,

amend and enforce Rules and Regulations concerning the operation and use of the Condominium; provided that such Rules and Regulations are not contrary to or inconsistent with the Act and the Condominium Documents. A copy of the Rules and Regulations shall be furnished by the Board of Directors to each Unit Owner prior to the time they become effective. All present and future Unit Owners, tenants, and occupants of the Units and any person who uses any part of the Condominium Property in any manner, are subject to, and shall comply with the provisions of the Condominium Documents and the Rules and Regulations. The acquisition, rental or occupancy of a Unit or the use of any part of the Condominium Property by any one person shall constitute his agreement to be subject to and bound by the provisions of the Condominium Documents and the Rules and Regulations, and such provisions shall be deemed to be enforceable as equitable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated in full in each and every deed of conveyance or lease thereof. The Association may promulgate enforcement provisions for violation of any Rule or Regulation by a Member, his family members, guests, invitees, lessees or renters, including the payment of penalties for such violations.

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

(a) The units within the Condominium Property are intended for the housing of persons 55 years of age or older; however, younger persons over the age of 24 are not restricted from occupying a Unit along with a person 55 years of age or older, so long as such co-occupancy is in compliance with this Section. In addition, certain exceptions may be made as listed herein. The provisions of this section are intended to be consistent with and are set forth in order to comply with, the Fair Housing Act, 42 U.S.C. Sec. 3601, *et. seq.*, and Alabama Fair Housing Law (collectively "Fair Housing Acts"), as such laws are amended from time to time, regarding discrimination based on familial status. Developer, until the termination of the Developer Control Period, or the Association, acting through its Board, shall have the power to amend this Section, without the consent of the Unit Owners or any other person.

(b) Except as may otherwise be permitted pursuant to this Section, each Unit shall at all times have as a permanent occupant at least one person who is 55 years of age or older (the "Qualifying Occupant"), except that in the event of the death or incapacity of a person who was the sole Qualifying Occupant of a Unit, the spouse of such Qualifying Occupant may continue to occupy the Unit provided that the provisions of the Fair Housing Acts and the regulations adopted hereunder are not violated by such occupancy. In addition, so long as the spouse of such Qualifying Occupant occupies the Unit, an individual between the ages of 24 and 55 shall be allowed to reside with such spouse. However, at the death or incapacity of such surviving spouse, the occupancy of the Unit shall be subject to the occupancy requirements set forth herein. For purposes of this section, an occupant shall not be considered a "permanent occupant" unless such occupant considers the Unit to be his or her legal residence and actually resides in the Unit for at least six months during every calendar year or such shorter period as the Unit is actually occupied by any person.

(c) No Unit shall be occupied by any person under the age of 24, except that one person under the age of 24 may occupy a Unit if the Board reasonably determines that such occupancy is necessary to provide reasonable accommodation for the health care or living arrangements or custodial needs or housing needs or guardianship requirements of a parent or grandparent or child



or grandchild who would be unable to continue to reside in the Unit without such an accommodation made by the Board. The Board will have sole discretion to make this determination and further shall have the authority to place conditions upon the applicant that, if unfulfilled, can result in a rescission of such an accommodation. For purposes of this section, a Unit shall be deemed to be "occupied" by any person who stays overnight in the Unit more than 12 successive days in any six month period or more than 24 days in any 12 month period. In addition, children and grandchildren of an occupant who are under the age of 24 may occupy the Unit provided they do not occupy the Unit for more than 12 days in any six-month period or more than 24 days in any 12 month period.

(d) Nothing in this section is intended to restrict the ownership of or transfer of title to any Unit; however, no Owner may occupy the Unit unless the requirements of this section are met, nor shall any Owner permit occupancy of the Unit in violation of this section. Owners shall be responsible for (1) including a statement that the Units within the Condominium Property are intended for the housing of persons 55 years of age or older, as set forth herein in conspicuous type in any lease or other occupancy agreement or contract of sale relating to such Owner's Unit, which agreements or contracts shall be in writing and signed by the tenant or purchaser, and (2) clearly disclosing such intent to any prospective tenant, purchaser, or other potential occupant of the Unit. Every lease of a Unit shall provide that failure to comply with the requirements of and restrictions of this section shall constitute a default under the lease.

(e) Any Owner, in writing, may request that the Board of Directors make an exception to the requirements of this section with respect to his/her Unit. The Board may, but shall not be obligated to, grant exceptions in its sole discretion, provided that the requirements for exemption from the Fair Housing Acts would still be met.

(f) In the event of any change in occupancy of any Unit as a result of a transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location or permanent residence, or otherwise, the Owner of the Unit shall immediately notify the Board in writing and provide to the Board the names and ages of all current occupants of the Unit and such other information as the Board may reasonably require to verify the age of each occupant (including driver's licenses or government issued i.d.). In the event that an Owner fails to notify the Board and provide all required information within 10 days after a change in occupancy occurs, the Association shall be authorized to levy monetary fines (up to \$100.00/day) against the Owner **and** the Unit for each day after the change in occupancy occurs until the Association receives the required notice and information, regardless of whether the occupants continue to meet the requirements of this section, in addition to all other remedies available to the Association under this Declaration. This requirement shall apply in addition to the requirement for notification of a change in ownership hereunder elsewhere.

(g) The Association shall maintain age records on all occupants of Units. The Board shall adopt and publish policies, procedures, and rules to monitor and maintain compliance with this section, including policies regarding visitors, updating of age records, the granting of exemptions pursuant to section (e) above and enforcement. The Association shall periodically distribute such policies, procedures and rules to the Unit Owners and make copies available to Unit Owners, their tenants, and Mortgagees upon reasonable request (copying charges assessed to the requestor).

(h) The Association shall have the power and authority to enforce this section in any legal manner available, as the Board deems appropriate, including, without limitation, conducting a census of the occupants of the Units, requiring copies of birth certificates or other proof of age

for each occupant of a unit to be provided to the Board on a periodic basis, and taking action (equitable or at law) to evict the occupants of any Unit which is not in compliance with the requirements and restrictions of this section. **Each owner hereby appoints the Association as its attorney-in-fact for the purpose of taking legal action to dispossess, evict, enjoin, or otherwise remove the occupants of his or her Unit as necessary to enforce compliance with this section.** Each owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Unit that, in the judgment of the Board, are reasonably necessary to monitor compliance with this section.

(i) Each Owner shall be responsible for ensuring compliance of its Unit with the requirements and restrictions of this section and the rules of the Association adopted hereunder by itself and by its tenants and other occupants of its Unit. Each Owner, by accepting title to a Unit, agrees to indemnify, defend and hold harmless the Association from any and all claims, losses, damages, and causes of action that may arise from failure of such Owner's Unit to so comply.

(j) No part of the Condominium Property shall be used for other than private residential use and the related common purposes for which Condominium Property was designed. The foregoing restrictions as to use shall not, however, be construed in such manner as to prohibit a Unit Owner from:

(i) Maintaining a personal library in his or her Unit;

(ii) Keeping personal business or professional records or accounts therein; or

(iii) Handling personal business or professional telephone calls or correspondence therefrom.

Such uses are expressly declared customary and incidental to the principal residential use and shall not be deemed a violation of these restrictions. All use of the Condominium Property and any Unit therein shall conform to applicable zoning ordinances, and all other laws and regulations of State, County and Municipal authorities having jurisdiction.

(k) No trade or business may be conducted in or from any Unit, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Condominium Property; (iii) the business activity does not involve persons coming onto the Condominium Property who do not reside in the Condominium Property or door-to-door solicitation of residents of the Condominium Property; and (iv) the business activity is consistent with the residential character of the Condominium Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium Property, as may be determined in the sole discretion of the Board: The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. Notwithstanding the above, the leasing of a Unit shall not be considered a trade or business within the meaning of this section. This section shall not apply to any activity conducted by the Developer with respect to its development and sale of the Condominium Property or its use

of any of the Units which it owns within the Condominium Property.

(l) No tent, shack, trailer, basement, outbuilding or structure of a temporary character shall be used at any time as a residence, either temporarily or permanently.

(m) No health care facilities operating as a business shall be permitted in the Condominium Property.

(n) The Common Elements and Limited Common Elements shall be used only for access, ingress and egress to and from the respective Units by the persons residing therein and their respective family members, guests, invitees, household help and other authorized visitors, and for other purposes incidental to the designated use of the respective Common Elements and Limited Common Elements. Designated walkways and paved areas shall be used at all times and shortcuts shall be avoided both to prevent accidents and to preserve the appearance of planted areas. The sidewalks and driveways must not be obstructed or encumbered or used for any purpose other than access, ingress, egress and for parking (except that under no circumstances may automobiles be parked on the sidewalks).

(o) Landscaping of the Condominium is the obligation of the Association and no Unit Owner or its occupant shall interfere with any landscaping of the Condominium or plant anything in the Common Elements or Limited Common Elements. No sprinkler or irrigation systems of any type shall be operated within the Condominium Property except by the Association. The Association, the Board of Directors and their authorized employees, agents and representatives shall have such access to any Unit as may be necessary for the repair, maintenance, replacement, alteration, care or protection of the Common Elements, Limited Common Elements, the Units or any portion thereof.

(p) No unlawful, immoral, illegal, noxious or offensive activities shall be carried on in any Unit, the Common Elements, the Limited Common Elements or elsewhere on the Condominium Property, nor shall anything be done therein or thereon which shall constitute a nuisance or which shall in the judgment of the Board of Directors cause unreasonable noise or disturbance to others.

(q) All music players, radios, televisions, phonographs, musical instruments or other items which cause noise shall be played at a level that does not annoy or interfere with other residents' enjoyment of his Unit or the Common Elements.

(r) No waste shall be committed to the Private Elements, Common Elements or Limited Common Elements.

(s) Alcoholic beverages or drugs shall not be dispensed for sale anywhere within the Property.

(t) The discharge of firearms or firecrackers or any other type of lighted apparatus within the Condominium Property is prohibited. The term "firearms" includes "B-B" guns, pellet guns, paintball and other firearms of all types, regardless of size.

(u) It is anticipated that some Unit Owners will install security systems in their Units. All alarm systems shall not annoy other Unit Owners or create unnecessary noise within the Property.

(v) Each Unit Owner shall not do or allow anything to be done therein which may

increase the rate or cause the cancellation of insurance on any Unit, the Common Elements or Limited Common Elements.

(w) All rubbish, trash and garbage shall be regularly removed from the Unit, and shall not be allowed to accumulate thereon. Unit Owner or occupant shall dispose of garbage and trash in accordance with Lee County or the City of Auburn ordinance or other procedure promulgated by Lee County or the City of Auburn.

(x) Trash, garbage and other waste shall not be kept except in sanitary containers and shall be disposed of in a clean and sanitary manner in sealed, waterproof bags, so as to avoid leakage in route to any refuse receptacles. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition.

(y) All equipment, garbage cans or recycling containers shall be kept hidden in the Unit's garage and not on any patio or porch except on days of regularly scheduled pick up. Failure to adhere to this rule shall result in a fine to the Unit Owner of \$25 per day of violation.

(z) Each Unit Owner shall be responsible for contracting for the removal of garbage at a cost to be assessed by the City of Auburn and each Unit Owner shall comply with the city's removal guidelines and schedule. Garbage cans or recycling containers shall only be placed out for pick-up on the designated garbage/recycling pick-up day. Under no circumstances shall garbage or other trash be allowed to remain outside of the Unit for any period of time. At its option, the Association may provide for alternative rules regarding garbage/trash removal.

(aa) No toxic or hazardous materials shall be disposed of within the Unit by dumping in the garbage containers or down the drains, or otherwise disposed of in the Project.

(bb) Until all of the Units have been sold and occupied by Purchasers, the Developer may use and show one or more of such unsold or unoccupied Units as a model Unit or sales office, and may maintain customary signs in connection therewith notwithstanding the provisions contained herein. Further, Developer shall be permitted to rent any unsold or unoccupied Unit to any third party without any permission from the Association or Board or any Unit Owner being necessary.

(cc) No building, fence, wall, pool, spa, obstruction, outside or exterior wiring, balcony, screen, patio, patio cover, tent, awning, carport, shack, treehouse, playground equipment, carport cover, trellis, utility shed, improvement or structure of any kind shall be commenced, installed, erected, painted, repainted or maintained upon any portion of the Private Elements, Common Elements or Limited Common Elements except with the express written permission of the Board.

(dd) Articles of personal property belonging to any Unit Owner, such as carriages, bicycles, tricycles, skateboards, playpens, velocipedes, benches, chairs, wagons, toys, furniture, firewood, clothing and other articles shall not be stored or kept in the Common Elements or on any visible Limited Common Elements or on any balcony, patio, porch stoop, sidewalk or driveway (except actual patio furniture approved for outdoor use and no more than one grill or smoker of the Unit Owner's choice) except when in actual use by a Unit Owner or his family or guests. All storage of any item will be confined to the interior of the Unit.

(ee) No fountains or gardening accessories shall be displayed or allowed in the common areas or limited common areas. No sports, theological or political signs, banners, flags or other decorations shall be displayed. No flags may be installed.

(ff) There shall be no outside laundering or drying of clothes, nor shall outdoor clothes

lines be maintained upon any portion of the Condominium Property. No clothing, rugs, towels, sheets, blankets, or other similar articles shall be hung or exposed from windows of a Unit or hung in the Common Elements or Limited Common Elements. No basketball hoops, backboards or other equipment shall be located on any portion of the Private Elements, Common Elements or Limited Common Elements. The Private Elements, Common Elements and Limited Common Elements shall be kept clear of rubbish, debris and other unsightly materials. No tablecloth, clothing, curtains, rugs or similar items may be shaken or hung from any of the windows, doors or porches of any Unit.

(gg) No Unit Owner shall sweep or throw or permit to be swept or thrown from any Unit, including windows and doorways, any dirt or other substances into any part of the Common Elements or upon the Unit of any other Unit Owner.

(hh) No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Private Elements, Common Elements, or Limited Common Elements, without the prior written consent of the Association. The Developer and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna or cable system for the benefit of all or a portion of the Condominium Property, should any such master system or systems be utilized by the Association and require any such exterior apparatus.

(ii) No dog runs or animal pens or temporary leashes or lease-stakes shall be permitted on any Unit or on any Common Area. Invisible fences are allowed but, only if they are not readily seen by the naked eye and they are pre-approved by the Association.

(jj) The maintenance, keeping, breeding, boarding and/or raising of animals, livestock or poultry of any kind, regardless of number, shall be and is hereby prohibited within any Unit, or upon any Common Elements or Limited Common Elements, except that this shall not prohibit residents from keeping pets normally kept in cages or aquariums, or a well-behaved, orderly dogs or cats and/or caged birds or other domestic pets, provided it is not kept or maintained for commercial purposes or for breeding. Unit Owners may keep a reasonable number of animals in an aquarium and must comply with all ordinances of the City of Auburn.

(kk) Pets shall not be allowed on any part of the Common Elements or Limited Common Elements unattended for any period of time. Pets shall not be permitted upon the Common Elements of the Condominium Property unless they are carried or on a hand-held leash. Pets should be taken to the adjoining designated grass areas, out of the way of sidewalks and pedestrian traffic, to attend to their natural needs. Pet owners are responsible for cleaning where pets foul the Common Elements or Limited Common Elements. Such fouling shall not be permitted to accumulate but shall be cleaned up immediately. Owners who fail to clean up after their pets shall be fined \$25 per instance.

(ll) Any resident who has a pet on any portion of the Condominium Property shall indemnify and hold the Condominium Association and each of its Members, their tenants, guests and employees, free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Condominium Property.

(mm) If required by the Association, pets shall be registered with the Association and inoculated as required by local law. The Board of Directors of the Association shall have the right

to order any person whose pet is a nuisance to remove such pet permanently from the premises upon three (3) days prior written notice.

(nn) No signs of any character shall be erected, posted, or displayed upon, in, from or about any Unit, the Common Elements or Limited Common Elements, including any window or door of a Unit, without the prior written consent of the Board of Directors, except each Owner may display only one (1) "For Sale" or "For Rent" sign in front of his Unit, but not on any window or door of the Unit. This right shall not include posting any advertising directions to another Owner's Condominium which is for sale, rent, or exchange.

(oo) The maximum speed limit on the Condominium Property is 15 MPH. All traffic regulations must be observed by each Owner and each Owner's family members, guests or tenants.

(pp) Vehicles shall be parked only in the garages and driveways serving the Units. The Board of Directors may, in its sole discretion, require registration of vehicles of occupants of Units. The Developer and/or Association may designate certain parking areas in connection with mail pick-up. Guest vehicles may be parked in the street but for not longer than 24 consecutive hours. No long term parking (more than 24 hours) in any common area shall be permitted. **Garage Doors shall be kept closed at all times except when opening is necessary for access, ingress or egress. This is to be strictly enforced by the Board and Unit Owners may be fined \$25 per day for each day their garage door is left open for no valid reason.**

(qq) No trailer, camper, commercial vehicle, recreational vehicle, mobile home, truck (other than standard size pickup truck or standard size van), boat, inoperable automobile, or similar equipment shall be permitted to remain upon any area within the Condominium Property. Commercial vehicles shall not include sedans (or standard size vans or pickup trucks) which are used both for business and personal use, provided that any signs or markings of a commercial nature on such vehicles shall be unobtrusive and inoffensive as determined by the Board. No noisy or smoky vehicles shall be operated on the Project. No vehicle repair other than washing and waxing or the changing of a flat tire shall be made on the Condominium Property. No unlicensed motor vehicles shall be operated upon the Project. The occupants of a Unit shall not have more than four (4) vehicles on the Project at any one time. For this purpose, "vehicle" shall include: car, van, golf cart, jeep, and those vehicles referred to above that are allowed on only a temporary basis. **Public parking is prohibited.** No motorized vehicle shall be operated on any walkway or other area except upon the roads, driveways and parking areas designated for vehicular use.

(rr) A violation of Section (qq) will result in the vehicle being towed away at the expense of the Unit Owner and/or the imposition of a fine of \$75 per day of storage on the Condominium Property. The Association shall not be liable for any damages incurred by the vehicle owner because of the removal or for any damage to the vehicle caused by the removal, unless such damage resulted from the intentional or negligent act of the Association or any person causing the removal of or removing the vehicle.

(ss) Only authorized maintenance personnel are allowed to adjust water valves, sprinklers, light timers, or any other Common Element equipment.

(tt) Any damage to Common Elements or Limited Common Elements or adjacent property caused by a Unit Owner, his family members, guests, tenants, invitees or pets shall be repaired by the Association and shall be assessed against the Unit Owner as a special assessment.

(uu) No item of common ownership shall be removed by any resident or guest from the Common Elements or Limited Common Elements. Any Owner, resident, family member, guest, tenant or invitee violating this rule shall be sanctioned and subject to criminal prosecution by the Association. The Owner of the Unit in which said resident resides shall be held responsible for the cost of any item so removed.

(vv) No Owner shall request or cause an employee of the Association, or of any management company employed by the Association, to do any private work except as authorized in writing by the Association.

(ww) Draperies, shades, shutters or mini-blinds or other window-coverings used to cover windows in the Units shall be lined in white or neutral shades.

(xx) All dryers will have lint filters (in compliance with current codes), which will remain installed and prevent lint from accumulating in the vent duct.

(yy) All stove hoods will have grease screens, which will remain installed and prevent grease from accumulating in the vent duct. All such filters and screens will at all times be used and kept clean, in good order and repair by the Unit Owner.

(zz) No electrical device creating electrical overloading of standard circuits may be used without permission from the Board. Misuse or abuse of appliances or fixtures within a Unit which affects other Units or the Common Elements is prohibited. Any damage resulting from such misuse shall be the responsibility of the Unit Owner from whose Unit it shall have been caused. Total electrical usage in any Unit shall not exceed the capacity of the circuits as labeled on the circuit breaker boxes.

(aaa) No water beds shall be permitted except in ground floor bedrooms.

(bbb) Notwithstanding anything set forth hereinabove under this section, the Developer expressly reserves the right to lease any Unit which it may own in the Condominium Property on such terms as it may deem proper and desirable and may transfer Units subject to such lease.

(ccc) Garage sales may not be held on any part of the Common Elements, Limited Common Elements or Private Elements. Each Unit Owner is responsible for every person such Owner admits into the Condominium Property and such entry shall not be permitted except to invited or expected family members, guests and invitees.

(ddd) Any Owner who has his or her Unit for sale is responsible for any person on the Condominium Property viewing such Unit and is responsible for providing ingress and egress to such prospective purchaser or sales agent. There are no restrictions on the amount for which a Unit may be sold or may be received by the Purchaser on sale, condemnation, casualty loss to the Unit or to the Condominium or on the termination of the Condominium.

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

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

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

6.06. Failure of the Association to Insist on Strict Performance; No Waiver. Failure of the



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

6.07. Use by Developer. Neither the Owners nor the Board of Directors of the Association nor their use of the Condominium Property or application of this Declaration shall interfere with the completion of the contemplated improvements and sales of the Units in the Condominium. The Developer may make such use of the unsold Units and of the Common Elements as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, management office and model units, the showing of the Condominium Property and the Units therein, the display of signs thereon and therein. These Special Declarant Rights exist during the Developer Control Period (so long as Developer holds any Unit in the Condominium for sale in the ordinary course of business). The Developer expressly reserves the right to lease any Unit which it may own in the Condominium Property on such terms as it may deem proper and desirable and may transfer Units subject to such lease.

## ARTTCLEVII

### RIGHTS OF MORTGAGEES

7.01. Notification of Mortgagees Required. Any Mortgagee shall have the right to be given written notification by the Association of (a) any sixty (60) day default by the Owner of the Unit covered by the Mortgage in the payment of assessments or in any other provision of the Condominium Documents; (b) any loss to or taking of the Common Elements or Limited Common Elements if such loss or taking exceeds \$100,000.00; (c) damage to a Unit covered by the Mortgage if the amount of such damage exceeds \$10,000.00; (d) any condemnation of all or a portion of the Condominium Property; (e) a lapse or cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (f) any proposed action that requires the consent of a specified percentage of Mortgagees.

7.02 Right of Inspection. Mortgagees shall have the right to examine the books and records of the Association or the Condominium Property and to receive annual reports, other financial data, and, upon request, an annual audited statement, within ninety (90) days following the end of any fiscal year of the Association. Said Mortgagee shall be solely responsible for all costs to the Association associated with such request.

7.03. Required Reserve Funds and Working Capital Fund. Assessments levied by the Board of Directors of the Association shall include an adequate reserve fund for maintenance, repair and replacement of those Common Elements and Limited Common Elements that must be replaced or repaired on a periodic basis, and shall be payable in regular installments rather than by special assessments. A working capital fund shall be established and each Unit Owner purchasing a Unit from the Developer shall pay a one-time initiation fee equal to \$275.00 at the time of closing of the purchase by

him of his Unit to be used by the Association as working capital.

#### 7.04. Priority of Mortgagees.

(a) Any lien which is or may be created hereunder upon any Unit, including, but not limited to, the lien created for assessments under Section 4.07 hereof and the right to foreclose the same is and shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any Mortgage upon such interest made in good faith and for value and recorded prior to the creation of the lien hereunder, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Section 4.07 hereof on the interest of the purchaser as an Owner after the date of such foreclosure sale to secure all assessments hereunder. After the date of such foreclosure sale, said lien, if any, shall be claimed and shall have the same effect and be enforced in the same manner provided herein.

Notwithstanding the above, the lien created pursuant to Section 4.07 hereof is prior to any Mortgage to the extent of the Common Expense assessments based on the annual budget which would have become due in absence of acceleration during the six months immediately preceding institution of an action to enforce the lien.

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

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

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

7.05. Request for Protection By Mortgagees. Whenever the holder of any Mortgage desires the benefit of the provisions of this Declaration, including, without limitation, the provisions of this Article VII, to be applicable to it, it shall serve written notice of such fact upon the Association, by registered or certified mail, addressed to the Association, and actually mailed to its address stated herein, identifying the Unit upon which it holds a Mortgage or identifying any Units owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it. Said notice shall designate the place to which the notices are to be given by the Association to such Mortgagee.

## ARTICLE VIII

### CASUALTY LOSS AND INSURANCE

#### 8.01 Responsibility of Owners; Separate Insurance Coverage.

(a) The Owner of each Unit may, at his expense, obtain insurance coverage for loss of or damage to any furniture, furnishings, personal effects, and other property belonging to such Owner, and may, at his expense, obtain insurance coverage against personal liability for injury to the person or property of

another while within such Owner's Unit or upon the Common Elements or Limited Common Elements. Risk of loss of or damage to any furniture, furnishings and personal property belonging to or carried on the person of the Owner, or which may be stored in any Unit, or in or upon Common Elements or Limited Common Elements, shall be borne by the Owner of each Unit. All furniture, furnishings and personal property constituting a portion of the Common Elements or Limited Common Elements and held for the joint use and benefit of all Owners of Units shall be covered by such insurance as shall be maintained in force and effect by the Association as hereinafter provided. Each Owner shall be required to notify the Association of all improvements made by the Owner to his Unit, the value of which is in excess of \$4,000.00. All insurance obtained by the Owner of each Unit shall, whenever such provisions shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners, the Association or Developer, and their respective servants, agents, employees and guests.

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

#### 8.02. Insurance to be Maintained By the Association.

(a) Hazard Insurance. The Association shall obtain and maintain at all times a policy or policies of multi-peril type hazard insurance, including insurance for such other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use, insuring the Condominium Property against loss or damage by the perils of fire, lightning and those perils contained in extended coverage, vandalism and malicious mischief endorsements, and if the Condominium Property is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards, the Board shall, to the extent obtainable, insure the insurable property included in the Condominium Property against the perils of flood under the National Flood Insurance Act of 1968 and acts amendatory thereto. The total amount of insurance after application of any deductibles shall be not less than the greater of 80 percent of the actual cash value of the Condominium 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 co-insurance provision and at each renewal date (but excluding land, foundations, excavations and other items usually excluded from such insurance coverage). Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association or the Insurance Trustee (hereinafter defined), as trustee for the use and benefit of the individual Owners (without naming them) in the proportionate shares equal to their respective percentage ownership of the Common Elements and Limited Common Elements. Periodically, prior to the renewal of any such policy or policies of insurance, the Association should obtain an opinion or an appraisal from a qualified appraiser for the purpose of determining the full replacement cost of the Common Elements, the Limited Common Elements and the Units for the amount of insurance to be obtained pursuant hereto. The cost of any such opinion or appraisal shall be a Common Expense. All such policies of insurance shall comply with the provisions of Section 8.03 hereof and shall (i) contain standard mortgagee clause endorsements in favor of the Mortgagee or Mortgagees of each Unit, if any, as their respective interest may appear; and (ii) provide that the insurance shall not be invalidated by any act or neglect of any Owner.

(b) Public Liability and Property Damage Insurance. The Association shall obtain and maintain at all times a comprehensive policy or policies of public liability and property damage insurance in such amount (but not less than \$1,000,000.00) and in such form as shall be required by the Association to protect said Association and the Owners of all Units which provide coverage for bodily injury and property damage resulting from the operation, maintenance or use of the Common Elements and Limited Common Elements and for legal liability resulting from employment contracts to which the Association is a party.

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

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

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

(f) All Unit Owners shall be responsible for insuring their interior unit finishes, appliances, fixtures, equipment, trim, build-out, furniture and living space.

8.03. Governing Provisions. All insurance obtained and maintained by the Association as provided in Section 8.02 above shall be governed by the following provisions:

(a) All policies shall comply with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association as they shall apply to condominium loans. To the extent that the provisions of this Declaration with respect to the maintenance of insurance shall conflict with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, then the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association shall control and such requirements shall be complied with by the Association.

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

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

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

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

(ii) An agreement by the insurer that the insurance coverage cannot be terminated or

materially changed without thirty (30) days prior written notice to the Association and the Mortgagee of each Unit;

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

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

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

8.05. Insurance Trustee. The Association may engage the services of a bank or trust company authorized to do trust business in the State of Alabama and having a capital and surplus of not less than \$50,000,000 to act on its behalf as an insurance trustee ("Insurance Trustee") and to receive and disburse the insurance proceeds in accordance with the provisions of this Declaration. In the event the lowest of two bids from reputable contractors for making all repairs required by any such loss shall exceed \$60,000.00, the Association upon written demand of the Mortgagee of any Unit shall engage the services of a bank or trust company to act as Insurance Trustee as aforesaid. The Association, as a Common Expense, shall pay a reasonable fee to said Insurance Trustee for its services rendered hereunder, and shall pay such costs and expenses as said Insurance Trustee may incur in the performance of any duties and obligations imposed upon it hereunder. Said Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then for only such money which comes into the possession of said Insurance Trustee. Whenever the Insurance Trustee may be required to make distribution of insurance proceeds to Owners of Units and their Mortgagees, as their respective interests may appear, or to any other party for repair, replacement or reconstruction of property, the Insurance Trustee may rely upon a certificate of the President and Secretary of the Association, executed under oath, which certificate will be provided to said Insurance Trustee upon request made to the Association. Such certificate is to certify unto said Insurance Trustee the name of the Owner of each Unit, the name of the Mortgagee who may hold a Mortgage encumbering each Unit, and the respective percentages of any distribution which may be required to be made to the Owner of any Unit, and his respective Mortgagee, as their respective interests may appear, or to certify the name of the party to whom payments are to be made for repair, replacement or reconstruction of all or a portion of the Condominium Property. The rights of the Mortgagee of any Unit under any standard mortgage clause endorsement to such policy shall, notwithstanding anything to the contrary therein or in any Mortgage contained, at all times be subject to the provisions hereof with respect to the application of insurance proceeds to reconstruction of the damaged Condominium Property; provided, however, that if the Association or the Insurance Trustee fails to perform all the conditions precedent required by the policy or policies of insurance, and fails to collect the amount of the loss within the time required by law, and the Mortgagee or Mortgagees are required to avail themselves of their rights under the standard mortgage clause to collect the proceeds of the policy or policies of insurance, any amount so collected through the efforts of said Mortgagee or Mortgagees shall be applied as directed by said Mortgagee or Mortgagees. No provision hereof shall entitle an Owner or any other party to any priority over a Mortgagee with respect to the distribution of any insurance proceeds with respect to such Unit.

8.06. Loss to Common Elements Only. In the event of the loss of or damage to only Common Elements, real or personal, by reason of fire or other casualties, which loss or damage is covered by fire

and casualty insurance, the proceeds paid to the Association or the Insurance Trustee, as the case may be, to cover such loss or damage shall be applied to the repair, replacement or reconstruction of such loss or damage. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of such Common Elements, then such excess insurance proceeds shall be paid by the Insurance Trustee to the Owners of all Units, the distribution to be separately made to the Owner of each Unit and his respective Mortgagee, as their interests may appear, in such proportion that the share of such excess insurance proceeds paid to the Owner of each Unit and his Mortgagee shall bear the same ratio to the total excess insurance proceeds as the undivided interest in the Common Elements appurtenant to each Unit bears to the total undivided interest in the Common Elements appurtenant to all Units. If there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association or the Insurance Trustee are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be so sufficient, then the Association shall pay, or shall deposit with the Insurance Trustee, as the case may be, a sum, which together with the insurance proceeds received or to be received, if any, will enable said Insurance Trustee to completely pay for the repair, replacement or reconstruction of any loss or damage, as the case may be. The monies to be so paid, or deposited by the Association with the Insurance Trustee, may be paid by the Association out of its reserve for replacement fund and if the amount in such reserve for replacement fund is not sufficient, or if the Board of Directors determines not to use such fund for said purpose, then the Association shall levy and collect an assessment against the Owners of all Units in an amount which shall provide the funds required to pay for said repair, replacement or reconstruction.

8.07. Loss to Common Elements, Limited Common Elements and/or Private Elements. In the event of loss of or damage to Common Elements, Limited Common Elements and/or any Private Element of any Unit by reason of fire or other casualty, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association or Insurance Trustee, as the case may be, to cover such loss or damage, shall be first applied to the repair, replacement or reconstruction of the Common Elements, then to the repair, replacement or reconstruction of the Limited Common Elements and any remaining insurance proceeds shall be applied to the repair, replacement or reconstruction of the Private Elements of any Unit which may have sustained any loss or damage so covered. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of the Common Elements, the Limited Common Elements and the Private Elements of Units sustaining any loss or damage, then such excess insurance proceeds shall be paid and distributed by the Insurance Trustee to the Owners of all Units, and to their Mortgagees, as their respective interests may appear. Such distributions are to be made in the manner and in the proportions as are provided for the distribution of insurance proceeds under Section 8.06 above. If there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association or the Insurance Trustee, as the case may be, are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be sufficient, then the Board of Directors of the Association shall, based on reliable and detailed estimates obtained by it from competent and qualified parties, determine and allocate the cost of repair, replacement or reconstruction between the Common Elements, the Limited Common Elements and the Private Elements of Units sustaining any loss or damage. If the proceeds of said fire and casualty insurance, if any, are sufficient to pay for the repair, replacement or reconstruction of any loss of or damage to the Common Elements, but are not sufficient to repair, replace or reconstruct any loss of or damage to the Limited Common Elements or the Private Elements of Units sustaining damage, then the Association shall levy and collect an assessment from the respective Owners of the Limited Common Elements and Private Element sustaining any loss or damage, and the assessment so collected from said Owner shall be deposited with the Insurance Trustee, if any, so that the sum on deposit with said Insurance Trustee shall

be sufficient to completely pay for the repair, replacement or reconstruction of all Common Elements, Limited Common Elements, if any, and Private Elements of Units. In said latter event, the assessment to be levied and collected from the Owners of the Limited Common Elements shall be pro rata to the extent there are Limited Common Elements appurtenant to a Unit and the assessment to be levied and collected from the Owner of each Private Element sustaining loss or damage shall be apportioned between such Owners in such manner that the assessment levied against each Owner of a Private Element and his Unit shall bear the same proportion to the total assessment levied against all of said Owners of Units sustaining loss or damage as the cost of repair, replacement or reconstruction of each Owner's Private Element bears to the cost applicable to all of said Private Elements sustaining loss or damage. If the fire and casualty insurance proceeds, if any, payable to the Association or the Insurance Trustee are not an amount which will pay for the complete repair, replacement or reconstruction of the Common Elements, it being recognized that such insurance proceeds are to be first applied to the payment for repair, replacement or reconstruction of said Common Elements before being applied to the repair, replacement or reconstruction of any Limited Common Elements or Private Element of a Unit sustaining loss or damage, then the cost to repair, replace, or reconstruct said Common Elements in excess of available fire and casualty insurance proceeds shall be levied and collected as an assessment from the Owners of all Units in the same manner as would be levied and collected had the loss or damage sustained been solely to the Common Elements and the fire and casualty insurance proceeds been not sufficient to cover the cost of repair, replacement or reconstruction. The cost of repair, replacement or reconstruction of the Limited Common Elements and the Private Element of each Unit sustaining loss or damage shall then be levied and collected by assessment of the Owners of the Limited Common Elements and the Owners of the Private Elements sustaining the loss or damage in the same manner as is above provided for the apportionment of such assessment between Owners of Limited Common Elements and Private Elements sustaining loss or damage.

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

## ARTICLE IX

### CONDEMNATION

9.01. Condemnation Considered a Casualty Loss. The taking of a portion of a Unit, the Common

Elements or the Limited Common Elements by eminent domain shall be deemed to be a casualty loss, and except as otherwise provided in Section 9.02 below, the awards for such taking shall be deemed to be proceeds from insurance on account of the casualty and shall be applied and distributed by the Association in accordance with the provisions of Article VIII. Even though the awards may be payable to the Owners, the Owners shall deposit the awards with the Association or Insurance Trustee, as the case may be; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a special assessment shall be made against a defaulting Owner in the amount of his award, or the amount of such award shall be set off against the sums hereinafter made payable to such Owner. If any Unit or portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Mortgagee of such Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition as provided in Section 7.01, and no provision hereof shall entitle the Owner of such Unit or other party to priority over such Mortgagee with respect to the distribution of any award or settlement to the Owner of the Unit.

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

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

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

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

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

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

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

(ii) The remaining portion of such Unit, if any, shall become a part of the Common Elements and shall be placed in condition for use by all of the Owners, in the manner approved by the Board of Directors of the Association; provided, however, that if the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner required for further improvement of the Common Elements under Section 5.03 above.

(iii) The shares in the Common Elements and Limited Common Elements appurtenant to the Units which continue as a part of the Condominium Property shall be equitably adjusted to



distribute the ownership to the Common Elements among the reduced number of Owners. This shall be done by recomputing the shares of such continuing Owners in the Common Elements as percentages of the total of the shares of such Owners as they exist prior to the adjustment.

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

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

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

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

## ARTICLE X

### TERMINATION

#### 10.1. Destruction of the Condominium Property.

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

(i) Two-thirds (2/3) or more of the Units in the Condominium Property shall have been destroyed or substantially damaged by fire or other casualty (including condemnation); or

(ii) The Condominium Property has been in existence in excess of forty (40) years and substantially all of the Units in the structure have substantially deteriorated and have been rendered substantially obsolete; Then the Board of Directors may call a meeting of the members of the Association to consider and vote upon whether to restore, repair and/or rebuild the Condominium Property, and if not, whether to terminate the Declaration and remove the Condominium Property from the provisions of the Act. If the termination of the Declaration and

the removal of the Condominium Property from the provisions of the Act is approved by the affirmative vote of at least seventy five percent (75%) of the Owners of all Units (based upon one vote for each Unit) and by at least twenty percent (20%) of all Mortgagees (based upon one vote for each Mortgage owned) after notice given as provided in Section 7.01 hereof, the Declaration and plan of condominium ownership established herein shall be subject to termination as provided in the Act and the Association shall be authorized to file on behalf of and in the name of the Unit Owners and shall file a petition for such termination and removal with the Circuit Court of Lee County, Alabama. If less than seventy five percent (75%) of the Owners of all Units and/or less than twenty percent (20%) of the Mortgagees vote in favor of terminating the Condominium Property as herein required, the Condominium Property shall be restored, repaired and/or rebuilt in accordance with the provisions of Sections 8.06, 8.07 and 8.08 above.

(b) In the event that the Circuit Court of Lee County shall grant the petition for termination of this Declaration and the plan of condominium ownership as provided in subparagraph (a) above, all of the Owners of Units shall be and become tenants in common as to ownership of the Land and any then remaining improvements thereon. The undivided interest in the Land and remaining improvements, except for Limited Common Elements, held by the Owner of each Unit shall be the same as the undivided interest in the Common Elements which were formerly appurtenant to such Unit, and the lien of any Mortgage or other encumbrance upon each Unit shall attach to the percentage of undivided interest of the Owner of a Unit in the Land and then remaining improvements as above provided. The Owners of the Limited Common Elements shall have an undivided interest in said Limited Common Elements which is the same as the undivided interest in the Limited Common Elements formerly appurtenant to the Units owned by such Owners, and the lien of any Mortgage or other encumbrance upon such Units shall attach to the undivided interest in the Limited Common Elements. Upon termination of this Declaration and the plan of condominium ownership established herein, the Owners of all Units still inhabitable shall, within sixty (60) days from the date of grant of the petition, deliver possession of their respective Units to the Association. Upon such delivery of possession, the Owners of inhabitable Units and their respective Mortgagees, as their interests may appear, shall become entitled to participate proportionately together with all Owners of uninhabitable Units in the distribution of proceeds in the possession of the Association or the Insurance Trustee. Upon such termination of this Declaration and the plan of condominium ownership established herein, the Association or the Insurance Trustee, as the case may be, shall distribute any insurance indemnity which may be due under any policy of casualty insurance to the Owners of the Units and their Mortgagees as their respective interests may appear, such distribution to be made to the Owner of each Unit in accordance with his then undivided interest in the Land and remaining improvements as herein provided. The Land and any remaining improvements thereon shall be subject to all easements of record, except the easements created in the Condominium Documents. The assets of the Association upon termination of the plan of condominium ownership created by this Declaration shall then be distributed to the Owner of each Unit and his Mortgagee, as their respective interests may appear, in the same manner as is above provided for the distribution of any final insurance indemnity.

10.02. Termination By Consent. Except in the event of this Declaration and plan of condominium ownership established herein being terminated as provided above, this Declaration and said plan of condominium ownership may only be otherwise terminated by the consent of seventy five percent (75%) of the Owners of all Units and twenty percent (20%) of all parties holding Mortgages, liens or other encumbrances, against any of said Units, in which event the termination of the Condominium Property shall be by such plans as may be then unanimously adopted by said Owners and parties holding any Mortgages, liens, or other encumbrances. Such election to terminate this Declaration and the plan of

condominium ownership established herein shall be evidenced by a termination agreement executed in writing by all of the aforesaid parties in recordable form, and such instrument shall be recorded in the Probate Office of Lee County, Alabama.

10.03. The Association Appointed as Attorney-In-Fact for Unit Owners. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the termination of this Declaration and plan of condominium ownership established herein.

#### ARTICLE XI

#### AMENDMENT

11.01. Amendments By Developer. Without limiting the rights of the Developer to alter the plans as described in Section 2.02 above, and notwithstanding any other provision herein contained, the following provisions shall be deemed to be in full force and effect, none of which shall be construed as to relieve the Developer from any obligations as a Unit Owner to pay assessments as to Units owned by it in accordance with the Condominium Documents.

(a) The Developer reserves the right to amend the By-Laws of the Association until such time as the Developer Control Period terminates and Developer relinquishes control of the Association as provided in Section 12.01 below.

(b) The Developer reserves the right to amend, without consent of any Owner, this Declaration at any time during the Developer Control Period.

(c) The Developer reserves the right at any time to amend this Declaration without the consent of other Owners if required by any Mortgagee as a condition of making a loan secured by an interest in a Unit in order to meet the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association; provided that any changes or amendments requested by a Mortgagee shall not materially affect the rights of the Unit Owners or the value of the Condominium Unit or the undivided interest in the Common Elements or Limited Common Elements, if any, attributable to each Unit Owner.

11.02. Amendments By Unit Owners. At such time as there is a Unit Owner other than the Developer and the Developer Control Period has terminated, then, in addition to the amendments permitted under Section 11.01 above, the Declaration may be amended in the following manner:

(a) A proposal to amend this Declaration may be considered at any meeting of the members of the Association called for that purpose in accordance with the provisions of the By-Laws; provided that the Association provides prior written (fax, mail, email, posting to door of unit, etc.) notice of such meeting to the Mortgagees as provided in Section 7.01 above. The proposal to amend the Declaration must be approved by the affirmative vote of the members representing not less than sixty-seven percent (67%) of the total allocated votes of the Association. The terms of this Section 11.02(a) shall not apply to the unilateral right of the Developer to amend this Declaration in accordance with the terms of Section 2.02 or 11.01 above.

(b) Notwithstanding the foregoing, no amendment to the Declaration under this Article XI shall:

(i) except with respect to the terms of Section 2.02 above, change a Unit,

including the ownership in Common Elements, responsibility for Common Expenses and voting rights, without the prior written approval of the Unit Owner or Unit Owners so affected and prior written approval of the holders of record of any mortgage or other liens on the Unit or Units so affected; or

(ii) change, impair or prejudice the rights of Developer or change the provisions of this Declaration with respect to the Developer's rights hereunder without Developer's prior written approval.

11.03. Effectiveness of Amendments. A copy of each amendment so adopted shall be certified by the Developer under 11.01 or, under 11.02 by the President or a Vice President and Secretary or Assistant Secretary of the Association as having been duly adopted, and shall be effective when recorded in the Probate Court of Lee County, Alabama.

## ARTICLE XII

### CONTROL OF THE ASSOCIATION

12.01. Election of Board of Directors. Developer, its successors or assigns, shall elect the members of the Board of Directors of the Association, and in the event of vacancies, the Developer shall fill the vacancies, until the termination of the Developer Control Period. Provided that the Developer may, at its option, terminate its control of the Association at an earlier date.

12.02. Notice of Meeting. Within sixty (60) days before the date of termination of control of the Association by the Developer under the Developer Control Period, the Association shall call and give not less than ten (10) days nor more than thirty (30) days notice of a meeting of the Unit Owners for the purpose of electing or ratifying the members of the Board of Directors of the Association. Such meeting shall be called and the notice given in accordance with the By-Laws.

12.03. Status of Unsold Units.

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

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

(c) Notwithstanding the provisions of Sections 4.02 and 12.03 (a) above, no assessments shall be imposed by the Association against the Developer as the Owner of unsold Units until such time as sixty (60) days after the conveyance of the first Unit. During such period, Developer shall be responsible for the Common Expenses and Limited Common Expenses of the Condominium Property, except that the Developer shall be entitled to use and apply to the payment of such Common Expenses and Limited Common Expenses any and all assessments made against the Unit Owners other than Developer and collected by the Association for

Common Expenses and Limited Common Expenses. The Developer shall be solely responsible for the maintenance, repair and operation of the Private Elements of the unsold Units.

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

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

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

### ARTICLE XIII

#### MISCELLANEOUS

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

13.02. Headings. The captions herein are used solely as a matter of convenience and shall not define, limit or expand any term or provision of this Declaration.

13.03. Gender Number. Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders.

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

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

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

THE REST OF THIS PAGE IS INTENTIONALLY BLANK

IN WITNESS WHEREOF, the Developer has hereunto set its signature and seal on the day and year first above written. Executed this the \_\_\_\_ day of \_\_\_\_\_, 2017.

RR VILLAS LLC, an Alabama limited liability company

BY: \_\_\_\_\_

ITS: CO-MANAGER

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ )  
\_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for said County in said State, certify that Jack Hughston, whose name as CO-Manager of RR Villas LLC, an Alabama limited liability company, is signed to the foregoing Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration of Condominium, he as such officer and with full authority, executed the same voluntarily on the date the same bears above.

Given under my hand and official seal of office this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

{Seal}

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION

COMMENCE AT A U.S. COAST AND GEODETIC SURVEY AND STATE SURVEY CONCRETE MONUMENT LOCATED AT THE SOUTHEAST CORNER OF SECTION 23 TOWNSHIP 19 NORTH, RANGE 25 EAST, AUBURN, LEE COUNTY, ALABAMA, FROM THIS POINT OF COMMENCEMENT, THENCE NORTH 43°15'03" WEST, A DISTANCE OF 1576.33 FEET; THENCE WITH A CURVE TO THE RIGHT,

SAID CURVE HAVING AN ARC LENGTH OF 78.89 FEET, A RADIUS OF 328.68 FEET, A CHORD BEARING OF NORTH 06°35'54" WEST, AND A CHORD LENGTH OF 78.70 FEET; THENCE NORTH 89°45'14" WEST, A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING OF A PARCEL OF LAND MORE FULLY DESCRIBED AS FOLLOWS: THENCE SOUTH 00°16'05" WEST, A DISTANCE OF 21.10 FEET; THENCE SOUTH 76°39'16" WEST, A DISTANCE OF 286.94 FEET; THENCE NORTH 00°08'40" EAST, A DISTANCE OF 538.37 FEET; THENCE ALONG A CURVE TO THE LEFT, SAID CURVE HAVING AN ARC LENGTH OF 223.51 FEET, A RADIUS OF 250.01 FEET, A CHORD BEARING OF SOUTH 25°28'03" EAST, AND A CHORD LENGTH OF 216.14 FEET; THENCE NORTH 51°04'45" WEST, A DISTANCE OF 57.81 FEET; THENCE NORTH 39°16'36" EAST, A DISTANCE OF 279.39 FEET; THENCE SOUTH 51°05'57" EAST, A DISTANCE OF 41.99 FEET; THENCE ALONG A CURVE TO THE RIGHT, SAID CURVE HAVING AN ARC LENGTH OF 501.99 FEET, A RADIUS OF 560.00 FEET, A CHORD BEARING OF SOUTH 25°25'08" EAST, AND A CHORD LENGTH OF 485.35 FEET; THENCE SOUTH 00°16'05" WEST, A DISTANCE OF 434.03 FEET TO THE POINT OF BEGINNING, SAID PARCEL CONTAINING 253,448.2 SQUARE FEET OR 5.82 ACRES. MORE OR LESS.

#### **JOINDER BY MORTGAGEE**

RENASANT BANK ("Renasant"), is the owner and holder of the indebtedness secured by the following instruments (collectively, the "Mortgage Documents") executed by RR Villas LLC:

1. Real Estate Mortgage dated July 8, 2016 and recorded in the Probate Office of Lee County, Alabama (the "Probate Office") in Real Property Book 4228, Page 545 securing indebtedness in the original principal amount of \$633,000.00;
2. Mortgage and Security Agreement dated February 8, 2017 and recorded in the Probate Office in Real Property Book 4281, Page 927 securing indebtedness in the original principal amount of \$717,285.00;

**For valuable consideration**, the receipt and sufficiency of which is hereby acknowledged,



Renasant joins in the execution of the foregoing Declaration of Condominiums (the "Declaration"), a condominium, for the purpose of giving its consent to and approval of said Declaration and subjecting and subordinating its rights under the Mortgage Documents to the covenants, conditions, restrictions, reservations, easements, liens for assessments, options, powers of attorney, and limitations on title created by the Alabama Uniform Condominium Act under Section 35-8A-1, et seq. of the *Code of Alabama* and under the Declaration and the condominium documents referred to in the Declaration, including, without limitation, the Articles of Incorporation and Bylaws of the RR Villas Condominium Association, Inc. Renasant is not the developer of the condominium under the Declaration and does not assume any obligation whatsoever under the terms, covenants and conditions of the Declaration.

RENASANT BANK

By: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of Renasant Bank is signed to the foregoing Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Declaration of Condominium, and with full authority, that he/she executed the same voluntarily for and as the act of said banking corporation on the day the same bears date.

Given under my hand and seal of office this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
NOTARY PUBLIC

(NOTARIAL SEAL)

My Commission Expires: \_\_\_\_\_

EXHIBIT B

**BYLAWS  
OF**

**THE VILLAS AT AUBURN VILLA OWNERS ASSOCIATION, INC.**

The following are the Bylaws of **THE VILLAS AT AUBURN VILLA OWNERS ASSOCIATION, INC.**, hereinafter referred to as the "**Association**," a nonprofit corporation organized pursuant to the Alabama Uniform Condominium Act of 1991, Section 335-8A-101, et seq., *Code of Alabama* (1975) as amended (the "**Act**") and the Alabama Nonprofit Corporation

Act, Section 10-3A-1, *et seq. Code of Alabama* (1975), as amended, for the purpose of managing and operating a certain condominium located in Lee County, Alabama, known as The Villas at Auburn, hereinafter referred to as the “**Condominium**”.

**ARTICLE I**  
**GENERAL**

**Section 1.01. Applicability of Bylaws.** The provisions of these Bylaws are applicable to the Condominium Property and to the use and occupancy thereof. All present and future owners, mortgagees, lessees and Occupants of Units and their employees, and any other persons who may use the Condominium Property in any manner are subject to all Condominium Documents, including without limitation, these Bylaws, the Declaration and the Rules and Regulations. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement by such occupant that all Condominium Documents, including these Bylaws, the Declaration, and the Rules and Regulations, as each may be amended from time to time, are accepted, ratified and that such Occupant will comply with the terms and provisions of each of these Condominium Documents.

**Section 1.02. Principal Office.** The initial principal office of the Association shall be at 2353 Bent Creek Road, Suite 100, Auburn, Alabama 36830, or at such other place as may be designated subsequently by the Board of Directors. All books and records of the Association shall be kept at its principal office.

**ARTICLE II**  
**DEFINITIONS**

**Section 2.01. Declaration.** “Declaration” shall mean that certain Declaration of Condominium of The Villas at Auburn dated June 1, 2017, and filed in the Office of the Judge of Probate of Lee County, as Instrument Number \_\_\_\_\_, as the same may be amended from time to time in accordance with the terms thereof.

**Section 2.02 Other Terms.** Other terms used herein shall have the meaning five to them in the Declaration, or, if not defined in the Declaration. Then in the Act, and are hereby incorporated by reference and made a part hereof.

**ARTICLE III**  
**MEMBERSHIP**

**Section 3.01. Qualification.** The sole qualification for membership in the Association shall be ownership of a Unit in the Condominium. Each Unit Owner’s respective membership in the Association shall be in accordance with his respective percentage of

ownership in the Common Elements of the Condominium. No membership may be separated from the Unit to which it is appurtenant. No initiation fees, costs, or dues shall be assessed against any person as a condition of the exercise of the rights of membership except such Assessments, levies, and charges as are specifically authorized by the Declaration.

**Section 3.02. Succession.** Except as to mortgages, the membership of each Unit Owner shall automatically terminate on the conveyance, transfer, or other disposition of a Unit Owner's interest in the Unit. The Unit Owner's membership shall automatically be transferred to the new Unit Owner succeeding to such ownership interest. On the conveyance, transfer, or other disposition of a portion of a Unit Owner's interest, the transferring Unit Owner and the transferee shall each be members of the Association in accordance with the percentage of ownership interest in the Common Elements of each following such conveyances or transfer.

**Section 3.03. Certificates of Membership.** The Board of Directors may provide for the issuance of certificates evidencing membership in the Association, which shall be in such form as may be determined by the Board. All certificates evidencing membership shall be consecutively numbered. The name and address of each Member and the date of issuance of the certificate shall be entered on the records of the Association maintained by the Secretary.

## **ARTICLE IV**

### **MEETINGS OF MEMBERS**

**Section 4.01. Annual Meeting.** A meeting of the Association must be held at least once each year. The annual meeting of the Members shall be held on the date, at the place, and at the time, as determined by the Board of Directors from time to time, provided that there shall be an annual meeting every calendar year and not later than twelve (12) months after the last preceding annual meeting. The purpose of the annual meeting shall be to elect the Directors and to transact any other business authorized to be transacted by the Members or stated in the notice of the meeting sent to the Members in advance thereof.

**Section 4.02. Special Meeting.** Special meetings of the Members may be called at any time by the President, a majority of the Board, or on receipt by the Board of a written request of Members representing at least twenty percent (20%) of the total votes of the Association. The business conducted at a special meeting shall be limited to that stated in the notice of the meeting.

**Section 4.03. Notice of Meeting.** The Secretary, or any other officer of the Association shall be responsible for notifying each Member if any annual meeting or special meeting. Notice of all meetings of Members shall state the time and place of the meeting and the subjects for which the meeting is called. Notices shall be mailed to a Member by United States Mail, postage prepaid, at the address given to the Board by said Member, or to the Member's Unit if no such address has been given to the Board. Notice of the annual meeting shall be

mailed or delivered to each Member not less than ten (10) nor more than sixty (60) days prior to the meeting.

**Section 4.04. Waiver of Notice.** Any Member may waive the right to receive notice of the annual meeting by sending a written waiver to the Board of Directors. Notice of special meetings may be waived before or after the meeting, orally or in writing. Attendance by a Member at an annual or special meeting, either in person or by proxy, shall constitute waiver of notice of such meeting.

**Section 4.05. Quorum – Any Meeting.** A quorum at any meeting shall be attained by the presence, either in person or by proxy, of persons entitled to cast twenty (20%) of the votes which may be cast for election of the Board.

**Section 4.06. Quorum – Board Meeting.** A quorum at any meeting of the Board shall be attained by the presence of persons entitled to cast fifty percent (50%) of the votes on that Board.

**Section 4.07. Adjournment for Lack of Quorum.** In the absence of a quorum at any meeting of the Members, a majority of those Members present in person or by proxy may adjourn the meeting to a time and date not less than three (3) days nor more than thirty (30) days from the meeting date, but no other business may be transacted. Notice of the adjourned meeting shall be given as in the case of an original meeting.

**Section 4.08. Action Without Meeting.** Any action that may be taken at a meeting of the Members may also be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by the number of Members required to take such action at a meeting, and is filed with the Secretary of the Association.

**Section 4.10. Minutes of Meeting.** The minutes of all meetings of Members shall be kept in a book available for inspection by Unit Owners or their authorized representatives. The Association shall retain these minutes for a period of not less than ten (10) years.

## **ARTICLE V**

### **MEMBER’S VOTING RIGHTS**

**Section 5.01. Votes.** Voting shall be on a percentage basis and the percentage of the vote to which a Member is entitled is the percentage assigned to the Unit of which the member is the Owner, as stated in the Declaration. If more than one person holds an interest in any Unit, all such persons shall be Members, but the Unit shall be entitled to the number of votes as set forth in the Declaration. The vote of a Unit shall not be divisible. If a Unit is owned by more than one owner or if the owner is a corporation, a limited liability company, a partnership, or limited partnership, then the vote for such Unit shall be exercised in the manner set forth in the Declaration.

**Section 5.02. Vote Required to Transact Business.** When a quorum is present, the holders of a majority of the voting rights present, in person or by proxy, shall decide any question brought before the meeting, unless the question is one on which, by express provision of the Act or the Condominium Documents, a different number is required, in which case, the express provision shall govern and control the decision in question.

**Section 5.03. Voting by Proxy.** Votes may be cast in person or by proxy, as provided in the Act. All proxies must be in writing, dated, signed by the Member generating the proxy, and filed with the Secretary of the Association before the appointed time of any meeting to which it applies. A Member may revoke a proxy at any time by delivering a written notice of revocation to the Association.

## **ARTICLE VI**

### **BOARD OF DIRECTORS**

**Section 6.01. Number.** The affairs of this Association shall be managed by a Board of Directors, consisting of at least three (3) persons, except during the Developer Period.

**Section 6.02. Qualification.** Subject to the terms of Section 6.03 below, each Director shall be a Unit Owner. If a Unit Owner is a corporation, limited liability company, partnership, or limited partnership, then an officer, partner, or employee of such Unit Owner may be a Director. If a Director shall cease to meet such qualifications during his or her term, he or she shall cease to be a Director and his or her place on the Board shall be deemed vacant.

**Section 6.03. Appointment of Declarant.** After the expiration of the Developer Control Period, the Declarant shall have appointed the first Board of Directors in the Articles of Incorporation of the Association, and shall have the right to appoint successor Directors in accordance with this Paragraph. Directors appointed by the Declarant need not be Unit Owners, and may be removed by the Declarant at any time. The right to appoint and remove Directors shall be subject to the following requirements:

- (a) Not later than ninety (90) days after the conveyance of twenty-five percent (25%) of Units which may be created to Unit Owners other than Declarant, at least one (1) member of the Board and not less than twenty-five percent (25%) of the members of the Board must be elected by Unit Owners other than the Declarant; and
- (b) Not later than ninety (90) days after the conveyance of fifty percent (50%) of the Units which may be created to Unit Owners other than the Declarant, 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 Declarant.

**Section 6.04. Election of Directors.** Director shall be elected in accordance with the

Act and the provisions of the Condominium Documents. Directors shall be elected at the annual meeting of Members. The election shall be by secret ballot (unless dispensed with by unanimous consent), and each member shall be entitled to cast one vote for each vacancy. There shall be no cumulative voting. Those candidates receiving the greatest number of votes cast either in person or by proxy shall be elected.

**Section 6.05. Term.** Each Director elected by the Members shall hold office until the next annual meeting of Members, and until his or her successor shall be elected and qualified, or until he or she resigns or is removed in any manner provided elsewhere herein. Each Director appointed by the Declarant shall hold office until he or she resigns, is removed by the Declarant, or his or her term expires as provided herein.

**Section 6.07. Removal.** The Unit Owners, by a two-thirds (2/3rds) vote of all persons present in person and entitled to vote at any meeting of the Unit Owners at which a quorum in person is present, may remove any member of the Board with or without cause, other than a member appointed by the Declarant. The vacancy so created shall be filled by the Members at the same meeting.

**Section 6.08. Compensation.** A Director shall not receive any compensation for any service he may render to the Association as a Director; provided, however, that any Director may be reimbursed for actual out-of-pocket expenses incurred by him or her in the performance of his or her duties.

## **ARTICLE VII**

### **MEETINGS OF DIRECTORS**

**Section 7.01. Regular Meetings.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the Directors. Notice of regular meetings shall be given to each Director, personally, by mail, or by telephone, not less than three (3) nor more than sixty (60) days in advance of any meeting.

**Section 7.02. Special Meetings.** Special meetings of the Directors may be called by the President and must be called by the Secretary at the written request of fifty percent (50%) of the votes of the Board. Not less than three (3) days notice of the meeting shall be given personally, by mail, or by telephone, which notice shall state the time, place, and purpose of the meeting.

**Section 7.03. Waiver of Notice.** Any Director may waive notice of a meeting either before or after the meeting, or may consent to the holding of a meeting without notice. Attendance by any Director at a meeting shall constitute waiver of notice of the meeting, except when attendance is for the express purpose of objecting at the beginning of the meeting to the transaction of business on the grounds that the meeting was not lawfully called.

**Section 7.04. Quorum.** A quorum shall consist of the Directors entitled to cast a majority of the votes of the entire Board of Directors. The acts of the Directors approved by a majority of the votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such a Director for the purpose of determining a quorum.

**Section 7.05. Action Without Meeting.** Any action permitted or required to be taken at a meeting of the Directors may be taken without a meeting if written consent setting forth the action so taken shall be signed by all the Directors, and filed with the minutes of the proceedings of the Board.

**Section 7.06. Minutes of Meeting.** The minutes of all meetings of the Board of Directors shall be kept in a minute book available for inspection by Unit Owners, or their authorized representatives, or by Directors at any reasonable time. The Association shall retain these minutes for a period of not less than five (5) years.

## **ARTICLE VIII**

### **POWERS AND DUTIES OF THE DIRECTORS**

**Section 8.01. Specific Powers.** The Board of Directors shall have the power to exercise all powers, duties, and authority vested in the Association by the Act, the Declaration, or these Bylaws, except for such powers and duties reserved thereby to the Members or the Declarant. The powers and duties of the Board shall include, but shall not be limited to, the following:

- a. To elect and remove officers of the Association as hereinafter provided;
- b. To administer the affairs of the Association and the Condominium Property;
- c. To maintain bank accounts on behalf of the Association and to designate signatories required therefor;
- d. To sell, lease, mortgage, or otherwise deal with Units acquired by the Association;
- e. To pay the costs of all taxes and utilities assessed against the Condominium that are not assessed and billed to the owners of individual Units;
- f. To borrow money on behalf of the Association when required in connection with the operation, care, upkeep, and maintenance of the Common Elements; provided, however, that the consent of at least twenty six (26) of the Members, obtained at a meeting duly called and held for such purpose in accordance with the provisions of these

Bylaws, shall be required for the borrowing of any sum in excess of \$10,000.00;

- g. To estimate the amount of the annual budget and to make and collect Assessments against Unit Owners to defray the costs, expenses, and losses of the Condominium;
- h. To use the proceeds of Assessments in the exercise of its powers and duties;
- i. To maintain, repair, replace, and operate the Condominium Property;
- j. To purchase insurance on the Property, and insurance for the protection of the Association and its Members, and the members of the Board of Directors and Officers of the Association;
- k. To reconstruct improvements after casualty and to further improve the property;
- l. To make and amend reasonable Rules and Regulations respecting the use of the Property and the operation of the Condominium;
- m. To enforce by legal means the provisions of the Act, the Declaration, the Articles of Incorporation, these Bylaws, and the Rules and Regulations for the use of the Property;
- n. To contract for the management of the Property and to delegate to such managing agent all powers and duties of the Association except such as are specifically required by the Declaration to have approval of the Board of Directors or the membership of the Association;
- o. To contract for the management or operation of portions of the Common Elements of the Condominium susceptible to separate management or operation, and to lease such portions;
- p. To retain attorneys and accountants; and
- q. To employ personnel to perform the services required for proper operation of the Condominium.

**Section 8.02. Committees.** The Board of Directors may designate one or more committees that shall have the powers of the Board of Directors for the management of the affairs and business of the Association to the extent provided in the resolution designating such a committee. Any such committee shall keep regular minutes of its proceedings and shall report the same to the Board of Directors.

**Section 8.03. Managing Agent.** The Board of Directors shall be authorized to employ the services of a manager or managing agent, who may either be a Director, Officer, or employee of the Association, or an independent person or firm qualified to manage the Property and affairs of the Condominium under the supervision of the Board. The compensation paid to any such manager or managing agent shall be in the amount established from time to time by the Board.

## ARTICLE IX



## **OFFICERS**

**Section 9.01. Qualifications; Election.** The executive officers of the Association shall be a President, Vice President, a Secretary, and a Treasurer, each of whom shall be a Director and all of whom shall be elected annually by the Board of Directors at its first meeting following the annual meeting of the Members of the Association. Any two or more offices may be held by the same person, except the offices of President and Secretary.

**Section 9.02. Special Appointments.** The Board may appoint such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

**Section 9.03. Term.** Each Officer shall hold office for the term of one (1) year and until his successor shall have been appointed or elected and qualified, provided that any officer may succeed himself.

**Section 9.04. Resignation and Removal.** Any Officer may be removed from Office either with or without cause by the vote of a majority of the Directors present at any meeting or in any other manner in accordance with the Act. Any Officer may resign at any time by giving written notice to the Board. Such resignation shall take effect on the date of receipt or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 9.05. Vacancies.** A vacancy in any office shall be filled by a majority vote of the Directors at any meeting. An Officer elected to fill a vacancy shall hold office for a term equal to the unexpired term of the Officer he succeeds.

**Section 9.06. Compensation.** An Officer shall not receive any compensation for any service he may render to the Association as an Officer; **provided, however,** that any Officer may be reimbursed for actual out-of-pocket expenses incurred by him in the performance of his duties.

**Section 9.07. Duties of the President.** The President, who shall be a Director, is the chief executive officer of the Association, and shall have all of the powers and duties that are usually vested in the office of president of a condominium association, including, but not limited to the following powers:

- (a) To preside over all meetings of the Members and of the Board;
- (b) To sign as President all deeds, contracts, and other instruments that have been duly approved by the Board;
- (c) To call meetings of the Board whenever he deems it necessary in accordance with the Rules and Regulations;

- (d) To have the general supervision, direction, and control of the affairs of the Association; and
- (e) To prepare, execute, record, and certify amendments to the Declaration on behalf of the Association.

**Section 9.08. Duties of the Vice President.** The Vice-President, who shall be a Director, shall have all of the powers and duties that are usually vested in the office vice-president of a condominium association, including, but not limited to, the following powers:

- (a) To perform the duties and exercise the powers of the President, in the absence or disability of the President; and
- (b) To assist the President in the exercise of his powers and the performances of his duties.

**Section 9.09. Duties of the Secretary.** The Secretary, who shall be a Director, shall Have all of the powers and duties that are usually vested in the secretary of a condominium association, including, but not limited to:

- (a) To keep a record of all meetings and proceedings of the Board and of the Members;
- (b) To keep the seal of the Association, if any, and affix it on all papers requiring said seal;
- (c) To prepare and serve such notices of meetings by the Board and the Members required either by law or by these Bylaws;
- (d) To keep current records showing the Members of the Association together with their addresses; and
- (e) To sign as Secretary all deeds, contracts, and other instruments which have been duly approved by the Board, if said instruments require a second Association signature.

**Section 9.10. Duties of the Treasurer.** The Treasurer, who shall be a Director, shall have all of the powers and duties that are usually vested in the treasurer of a condominium association, including but not limited to the following powers:

- (a) To receive and deposit in such bank or banks as the Board may from time to time direct, all of the funds of the Association;
- (b) To be responsible for and supervise the maintenance of books and records to account for such funds and other Association assets;
- (c) To disburse and withdraw said funds as the Board may from time to time direct, and in accordance with prescribed procedures; and
- (d) To prepare and distribute the financial statements for the Association.

**Section 9.11. Delegation of Powers.** An Officer of the Association may delegate his or her powers to another person or to a managing agent.

## ARTICLE X

## **FISCAL MANAGEMENT**

**Section 10.01. Fiscal Year.** The fiscal year of the Association shall be a period of twelve (12) months from January 1 of each year to December 31 of the following year.

**Section 10.2. Annual Budget.** The annual budget of the Association shall be detailed and shall show the amounts budgeted by accounts and expense classifications. Expenses shall be estimated for each of the following categories: (i) administration expense; (ii) management fees; (iii) maintenance; (iv) taxes; (v) insurance; (vi) salaries; (vii) legal and accounting fees; (viii) repairs and replacement; and (ix) utilities. The budget shall also include reserve accounts for capital expenditures and deferred maintenance, including, but not limited to roof replacement, building painting, and payment resurfacing. The amount reserved shall be computed by means of a formula that is based on the estimated life and estimated replacement cost of each reserve item. The budget shall also set forth each Unit Owner's proposed Assessment for Common Expenses.

**Section 10.03. Adoption of Annual Budget.** The Board of Directors shall prepare or cause to be prepared a proposed annual budget for each fiscal year of the Association. The final annual budget shall be adopted by the Board at a duly noticed meeting, and the Board shall furnish copies of the final annual budget to each Unit Owner within thirty (30) days after the adoption. The Board shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after delivery or mailing of the budget to the Unit Owners. Unless at that meeting a majority of the Unit Owners present in person, or by proxy, reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected, the periodic budget last ratified by the Unit Owners ratify a subsequent budget proposed by the Board.

**Section 10.4. Assessments.** Assessments for the Common Expenses and any Limited Common Expenses shall be made in accordance with the Act and the Condominium Documents. On or before the first (1<sup>st</sup>) day of each month of the fiscal year for which the Assessments are made, each Unit Owner shall pay one-twelfth (1/12<sup>th</sup>) of his or her share of the Common Expenses for such year as shown by the annual budget. The Assessment of the Common Elements and any Limited Common Expenses shall be set forth in the Declaration, but the yearly assessment for each Unit Owner shall be proportionate to his or her respective ownership interest in the Common Elements and the Assessment for any Limited Common Expenses shall be as set forth in the Declaration. The Board of Directors may cause to be sent to each Unit Owner, on or before the first (1<sup>st</sup>) day of each month, a statement of the monthly Assessment. However, the failure to send or receive such monthly statement shall not relieve the Unit Owner of his obligation to make timely payment of the month Assessment. If the Board shall not approve an annual budget or shall fail to determine new monthly Assessments for any year, or shall be delayed in doing so, each Unit Owner shall continue to pay the amount of his

monthly Assessment as last determined. No Unit Owner shall be relieved of his obligation to pay his Assessment by abandonment of his Unit or lack of use of the Common Elements.

**Section 10.05. Acceleration of Assessment Installments.** If a Unit Owner shall be in default in the payment of any installment of an annual Assessment for more than thirty (30) days, the Board may accelerate all remaining monthly installments due for the balance of the term covered by the annual budget, and the same shall thereupon become immediately due and payable.

**Section 10.6. Supplemental Assessments.** If during the course of any fiscal year, it shall appear to the Board that the monthly Assessments, as determined in the annual budget, are insufficient or inadequate to cover the estimated Common Expenses for the remainder of such year, then the Board shall prepare and approve a supplemental budget covering the estimated deficiency. Copies of the supplemental budget shall be delivered to each Unit Owner, and thereupon a supplemental Assessment shall be made to each Unit Owner for his or her proportionate share of the supplemental budget.

**Section 10.7. Lien for Expenses.** If any Unit Owner shall fail or refuse to make any payment of the Common Expenses or Limited Common Expenses or other Assessments when due, the amount due, together with costs, reasonable attorney's fees and interest thereon at a rate to be set by the Board of Directors but in no even greater than eighteen percent (18%) per year from and after the date said Common Expenses or Limited Common Expenses or other Assessment became due and payable in accordance with the Declaration and the Act, shall constitute a lien on the interest of the Unit Owner in the Property.

**Section 10.08. Default.** In the even an Owner of a Unit does not pay any sum charges or Assessments required to be paid to the Association with thirty (30) days from the due date, the Association may foreclose the lien encumbering the Unit created by non-payment of the required moneys in accordance with the Act; provided that the Association shall give reasonable advance notice of the intention to foreclose, which notice shall be mailed, postage prepaid, to the Unit Owner and to all persons having a mortgage lien or other interest of record in such Unit as shown in the Association's record of ownership. The Association shall be entitled to the appointment of a receiver, if it so requests. The Association shall have the right to bid on the Unit at a foreclosure sale and to acquire, hold, mortgage and convey the same. In any such foreclosure action, the lien of the Association shall be stated in the Declaration. In lieu of foreclosing its lien, the Association may bring suit to recover a money judgment for any sums, charges or Assessments required to be paid to the Association without waiving its lien securing same. In any action either to foreclose its lien or to recover a money judgment, brought by or on behalf of the Association against a Unit Owner, the losing defendants shall pay the cost thereof together with a reasonable attorney's fee.

If the Association becomes the Owner of a Unit by reason of foreclosure, it shall offer said Unit and properties for sale and at such time as a sale is consummated it shall deduct from such proceeds all sums of money due it for monthly Assessments and charges, all costs incurred in the bringing of the foreclosure suit, including reasonable attorney's fees, and any and all expenses incurred in the resale of the Unit, which shall include but not be limited to advertising expenses, real estate brokerage fees and expenses necessary for the repairing and refurbishing of the family Unit in question. All moneys remaining after deducting the foregoing items of expense shall be returned to the former Owner of the Unit in question.

**Section 10.09. Annual Statement.** Within one hundred twenty (120) days after the end of each fiscal year, the Board shall cause to be furnished to each Unit Owner, s statement for the year so ending showing the receipt and expenditures of the Association, and such other information as the Board may deem desirable.

**Section 10.10. Accounting Records.** The Board shall cause to be kept, in accordance with generally accepted accounting principles, a record of all receipts and expenditures; and a separate account for each Unit showing the Assessments or other charges due, the due dates thereof, the present balance due, and any interest in common surplus. Such records shall be open to inspection by Unit Owners at reasonable times.

## **ARTICLE XI**

### **AMENDMENTS TO THE BYLAWS**

**Section 11.01. Notice.** Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is to be considered. However, during the Developer Control Period as described in the Declaration, the Declarant may, from time to time, amend these bylaws at its sole discretion.

**Section 11.02. Adoption.** The Board of Directors shall have the power to alter, amend, or repeal any of these Bylaws or to adopt new Bylaws by the affirmative vote of a majority of all of the Directors; **provided, however**, that any bylaw adopted by the Board may be altered, amended, or repealed, and new bylaws may be adopted by the affirmative note of at least two thirds (2/3) of the total number of votes of all of the Members. The Members may prescribe in any bylaw adopted by them that such bylaw shall not be altered, amended, or repealed by the Board.

**Section 11.03. Prohibited Amendments.** No amendment may be adopted that would eliminate, modify, prejudice, abridge, or otherwise adversely affect any rights, benefits, privileges, or priorities granted to the Declarant or any Mortgagee without the consent of the

Declarant or the Mortgagee, as the case may be. No Amendment that is in conflict with the Articles or the Declaration shall be adopted.

**Section 11.04. Recording.** Any amendment shall become effective when recorded in the Office of the Judge of Probate of Lee County, Alabama, with these Bylaws in accordance with the Act.

## **ARTICLE XII**

### **RULES AND REGULATIONS**

The Board of Directors may from time to time adopt, modify, amend, or add to Rules and Regulations concerning the use of the Condominium Property; **provided, however**, that a majority of the Members may over rule the Board with respect to any such Rules and Regulations or modifications thereof or any amendments or additions thereto. Copies of such Rules and Regulations, or amendments, additions, or modifications, shall be delivered to each Unit Owner not less than thirty (30) days prior to the effective date thereof. No rule or regulation that is in conflict with the Condominium Documents shall be adopted.

## **ARTICLE XIII**

### **MISCELLANEOUS**

**Section 13.01. Construction.** Whenever the context so permits, the singular shall include the plural, the plural shall include the singular, and the use of gender to include all genders.

**Section 13.02. Captions.** The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these Bylaws or the intent of any provisions hereof.

**Section 13.03. Conflicts.** In the event of any conflict between the provisions of the Bylaws and the Declaration, the Declaration shall govern.

**Section 13.04. Compliance.** These Bylaws are set forth to comply with the requirements of the Alabama Nonprofit Corporation Act and the Act and shall be considered an appendage to the Declaration filed prior hereto in accordance with said Acts. In case any of these Bylaws conflict with the provisions of said statutes, it is hereby agreed and accepted that the provisions of the Act will apply.

**Section 13.05. Right of Entry.** The manager and any person authorized by the Board shall have the right to enter each Unit in case of any emergency originating in or threatening such Unit whether or not the Owner or Occupant is present at the time. Every Unit

Owner and Occupant, when so required, shall permit other Unit Owners or their representative to enter his Unit at reasonable times for the purpose of performing authorized installations, alterations or repairs to the Common Elements therein, **provided, however**, that requests for entry are made in advance.

EXHIBIT C

RECORDED CONDOMINIUM PLAT FOR THE VILLAS AT AUBURN



EXHIBIT D

PERCENTAGE OWNERSHIP OF COMMON ELEMENTS

<u>UNIT</u>	<u>PERCENTAGE OF OWNERSHIP</u>
101	5%
102	5%
103	5%
104	5%
201	5%
202	5%
203	5%
204	5%
301	5%
302	5%
303	5%
304	5%
401	5%
402	5%
403	5%
404	5%
501	5%
502	5%
503	5%
504	5%

## EXHIBIT E

### PROPOSED INITIAL BUDGET ITEMS

1. Grounds Maintenance/Landscaping – Common Elements
2. Common Elements Electric/Gas
3. Common Elements Irrigation/Water/Sewer
4. Association Property/Casualty Insurance – Common Elements
5. Board of Directors/Officers Insurance
6. Common Elements Property Taxes
7. Villas Pest Control
8. Accounting and Legal
9. Reserves:
  - a). Asphalt Paving- Private Drive
  - b). Roof Shingles

Estimated at \$195.00/month per villa

EXHIBIT F

EASEMENTS, RESTRICTIONS, CONDITIONS & LIMITATIONS OF CONDOMINIUM PROPERTY

All as shown on recorded plat or filed on the public record.

## EXHIBIT Z

### RULES AND REGULATIONS OF THE VILLAS AT AUBURN

(These rules may be amended by the Board of Directors at any regular or special meeting or, without a meeting if done in accordance with the Bylaws of the Association and the requirements of this document)

1. All Rules and Regulations contained in Article/Section 6.02(a)-(ddd) herein above.
2. All other Rules and Regulations as promulgated by the Board of Directors of the Association.