



Homeowners Association Monthly Dues as of 1/1/2024

1 Bedroom Carriage House	\$290.00
2 Bedroom Duplex	\$340.00
2 Bedroom Townhome	\$305.00
3 Bedroom Flat	\$340.00
3 Bedroom Townhome	\$375.00
3 Bedroom Duplex	\$395.00
3 Bedroom Cottage	\$395.00
3 Bedroom Longleaf	\$395.00
4 Bedroom Townhome	\$450.00
4 Bedroom Manor	\$425.00
4 Bedroom Cottage	\$460.00
5 Bedroom Manor	\$485.00

HOA Monthly Dues include:

24-hour access to the clubhouse which includes:

Computer room and study space

Billiard Table

Lounge area and entertainment space

State of the art fitness center

Outdoor Amenities:

Three tier resort style pool

Lighted and gated tennis court

Sand volleyball court

Basketball Goal

Dog Park

Charcoal grills

Firepits and gas fireplaces

Utility and Maintenance Includes:

Community wide WIFI

HD Cable

Security alarm service

Maintenance to exterior of buildings

Full lawn care service

General insurance for the community

Land, grounds and pool maintenance

Management of gates to the community



CREEKSIDE OF AUBURN

HOMEOWNERS ASSOCIATION



DECLARATION OF CONDOMINIUM OF CREEKSIDE OF AUBURN CONDOMINIUMS

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**DECLARATION OF CONDOMINIUM
OF
CREEKSIDE OF AUBURN CONDOMINIUMS**

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DECLARATION OF CONDOMINIUM OF CREEKSIDE OF AUBURN CONDOMINIUMS

Table of Contents

	Page
Article I Submission of Property; Defined Terms.....	1
1.01 Submission of Property.....	1
1.02 Definitions.....	1
Article II Description of Improvements	6
2.01 Identification of Units	6
2.02 Balconies and Terraces	7
2.03 [Intentionally Deleted].....	7
2.04 Ownership of Common Elements and Limited Common Elements.....	7
2.05 Exterior Unit Areas.....	7
Article III Easements; Title Exceptions.....	7
3.01 Easements and Restrictions.....	7
3.02 Utility Easements	8
3.03 Additional Utility Easement	8
3.04 Easements for Ingress and Egress.....	8
3.05 Easement for Use of Leased or Acquired Property	8
3.06 Easements for Encroachments	8
3.07 Easement of Support	9
3.08 Easement for Repair Purposes	9
3.09 Easement for Pest Control Services.....	9
3.10 Easement for Construction of Additional Phases	9
3.11 Easements Appurtenant to Units.....	10
3.12 Title Exceptions	10
Article IV Special Declaration and Development Rights	12
4.01 Amendment of Condominium Plan	12
4.02 Option to Increase Size of Units and Walls	13
4.03 Use for Sales Purposes.....	13
4.04 Use by the Developer.....	13
4.05 Development Right—Phase II.....	13
4.06 Development Right—Phase III.....	14
4.07 Development Right—Phase IV.....	15
4.08 Timing of Additional Phases	16
Article V Organization and Management.....	16
5.01 Management of the Condominium Property.....	16
5.02 Members	16
5.03 By-Laws.....	16
5.04 Voting Requirements	17

Article VI	Assessments	17
6.01	Liability, Lien and Enforcement	17
6.02	Assessments	17
6.03	Required Reserve Funds and Working Capital Fund	17
6.04	Annual Budget	18
6.05	Omission of Assessment	18
6.06	Detailed Records	18
6.07	Share of Common Expenses and Limited Common Expenses	18
6.08	Payment of Common Expenses and Limited Common Expenses	19
6.09	Default in Payment of Assessments	19
6.10	Election of Remedies	20
Article VII	Maintenance and Operation of the Condominium Property	20
7.01	Association's Obligation to Repair	20
7.02	Maintenance of Limited Common Elements	21
7.03	Damage Caused by Unit Owner, Tenant, Etc.	21
7.04	Owner's Obligation to Repair	21
7.05	Alterations, Additions and Improvements by the Association	23
7.06	Utilities	24
Article VIII	Restrictions on Use	24
8.01	Rules and Regulations	24
8.02	Restrictions on Use	24
8.03	Lease of Units	27
8.04	No Right to First Refusal	28
8.05	Right of Access	28
8.06	Limitation of Liability	29
8.07	Abatement of Violations	29
8.08	No Waiver of Remedies	29
Article IX	Rights of Mortgagees	30
9.01	Notification of Mortgagees Required	30
9.02	Right of Inspection	30
9.03	Priority of Mortgagees	30
9.04	Request for Protection by Mortgagees	31
9.05	Blanket Mortgages	31
Article X	Casualty Loss and Insurance	31
10.01	Responsibility of Owners; Separate Insurance Coverage	31
10.02	Insurance to be Maintained by the Association	32
10.03	Governing Provisions	33
10.04	Premiums	34
10.05	Insurance Trustee	34
10.06	Loss to Common Elements Only	35
10.07	Loss to All Elements	36
10.08	Estimates of Repair, Plans and Specifications; Payment of Assessments	37

Article XI	Condemnation.....	37
11.01	Condemnation a Casualty Loss.....	37
11.02	Partial Condemnation.....	38
11.03	Association Appointed as Attorney-In-Fact for Unit Owners	39
Article XII	Termination.....	40
12.01	Destruction of the Condominium Property.....	40
12.02	Termination By Consent	41
Article XIII	General Provisions	41
13.01	Covenant Against Partition.....	41
13.02	Unit Keys	41
13.03	Disclosures	42
Article XIV	Amendment.....	44
14.01	Amendments by Developer.....	44
14.02	Amendments by Unit Owners.....	44
14.03	Prohibited Amendments.....	45
14.04	Effectiveness of Amendments	45
Article XV	Control of the Association	45
15.01	Election of Board of Directors.....	45
15.02	Notice of Meeting	46
15.03	Status of Unsold Units	46
15.04	Professional Management and Other Contracts.....	46
Article XVI	Dispute Resolution.....	47
16.01	Agreement to Encourage Resolution of Disputes Without Litigation.....	47
16.02	Dispute Resolution Procedures	48
16.03	Initiation of Litigation by Association.....	49
16.04	Developer's Right to Cure Alleged Defects	49
Article XVII	Miscellaneous	51
17.01	Rights and Powers of Successors and Assignees.....	51
17.02	Headings	51
17.03	Gender/Number.....	51
17.04	Exhibits	51
17.05	Invalidity and Severability.....	51
17.06	Interpretation.....	52
17.07	Notice.....	52
17.08	Governing Law	52
17.09	Conflict Between Documents	52

List of Exhibits:

- | | |
|-----------|---|
| Exhibit A | Legal Description of the Land |
| Exhibit B | Bylaws of Creekside of Auburn Condominium Association |
| Exhibit C | Plat and Plan of Condominium Development |
| Exhibit D | Percentage Ownership of Common Elements and Limited Common Elements |

**DECLARATION OF CONDOMINIUM
OF
CREEKSIDE OF AUBURN CONDOMINIUMS**

THIS DECLARATION OF CONDOMINIUM OF CREEKSIDE OF AUBURN CONDOMINIUMS (this "Declaration") is made by Retreat of Auburn, L.L.C., an Alabama limited liability company (the "Developer"), pursuant to the provisions of the Act (hereinafter defined), for the purpose of forming a condominium and establishing certain easements, covenants and restrictions to run with the land.

**Article I
Submission of Property; Defined Terms**

1.01 **Submission of Property.** The Developer is the owner of the Land (hereinafter defined), on which certain buildings and other improvements are located as shown on the Plan and Plat attached hereto as Exhibit "C". It is the desire and intention of the Developer, by recording this Declaration, to submit the Land, together with all improvements, easements, rights and appurtenances thereunto belonging, to the Act and create with respect to the Land, a condominium to be known as CREEKSIDE OF AUBURN CONDOMINIUMS (the "Condominium") and to impose upon the Land mutually beneficial restrictions under a general plan for the benefit of all of the Condominium Units and the Owners (hereinafter defined) thereof. The Developer, upon recording this Declaration, does submit the Land, together with the improvements thereon, owned by the Developer in fee simple, to the provisions of the Act to be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, improved and in any other manner utilized subject to the provisions of the Act and subject to the covenants, conditions, restrictions, uses, 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 the Land 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, having or acquiring any right, title or interest in the Land or any part thereof, and shall be for the benefit of each Owner of any portion of the Property or any interest therein, and shall inure to the benefit of and be binding upon each successor-in-interest to the Owners thereof.

1.02 **Definitions.** In addition to terms separately defined herein, certain terms as used in this Declaration shall be defined as follows, unless the context clearly indicates a different meaning therefor, and shall be consistent with the meanings stated in the Act:

(A) "Act" shall mean the Alabama Uniform Condominium Act of 1991, Ala. Code §§ 35-8A-101 to 417 (1975), as the same may be amended from time to time.

(B) "Articles" shall mean the Articles of Incorporation of the Association that are filed of record in the Real Property Records. 3003 CONDO Book 4 Page 396

(C) "Assessments" shall mean the assessments, charges and services of various types imposed and/or allocable pursuant to Article VI hereof.

(D) "Association" shall mean Creekside of Auburn Condominium Association, Inc., a nonprofit corporation organized pursuant to the Alabama Nonprofit Corporation Act, Ala. Code §§ 10-3A-1 to 225 (1975).

(E) "Board of Directors" or "Board" shall mean the Board of Directors of the Association, elected pursuant to the Bylaws of the Association.

(F) "Bylaws" shall mean the Bylaws of the Association providing for the self-government of the Condominium Property by the Association, a copy of which is attached hereto as Exhibit "B" and made a part hereof for all purposes, as may be amended.

(G) "Common Elements" shall mean all portions of the Condominium Property other than the Units which are held or designated for use and enjoyment of the Owners and shall include, without limitation, the following:

- (1) the Land;
- (2) the foundations and footings, load bearing walls, perimetrical walls, structural slabs, columns, beams and supports;
- (3) the roofs, lobbies, mechanical equipment, and storage areas designated as Common Elements, ramps, handrails, sidewalks, stairways and entrances or communication ways;
- (4) the compartments or installations of or for central services such as central air conditioning, ventilation, heating, power, light, electricity, telephone and television, cable, gas, fire protection, security, cold and hot water, plumbing, reservoirs, water tanks and pumps, storm drains, sewer lines, flues, trash chutes, incinerators and the like, and all similar devices and installations existing for common use, but excluding all compartments or installations of or for utilities and services which exist for private use in the Units;
- (5) the premises and facilities, if any, used for the maintenance or repair of the Property;
- (6) all common recreational facilities such as any swimming pool and grounds, and surrounding areas, sun decks, yards and walkways, any tennis court, any basketball court, and any croquet/bocce courts;

(7) sidewalks, boardwalks, lawn areas, ~~fig 903 or else~~ areas, landscaping, trees, curbs, roads, walkways, streets and ~~parking lot~~; ~~Page 8~~

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

(9) furniture, appliances, equipment and any other personal property transferred or assigned by the Developer to the Association or from time to time owned or leased by the Association and held for use in common by the Owners; and

(10) all other elements (other than the Units) desirable or reasonably susceptible of common use or necessary to the existence, upkeep and safety of the Condominium Property; and

(H) "Common Expenses" shall mean the expenses arising out of the operation and ownership of the Common Elements and shall include, but not be limited to, expenses of administration of the Common Elements; 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 any 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.

(I) "Condominium Documents" shall mean this Declaration, including all Exhibits attached hereto, the Articles and the Rules and Regulations, as same may be amended.

(J) "Declaration of Condominium" or "Declaration" shall mean this Declaration of Condominium of Creekside of Auburn Condominiums, as may be amended.

(K) "Developer" shall mean Retreat of Auburn, L.L.C., an Alabama limited liability company, and its successors and assigns, other than an Owner, who shall receive by assignment from the Developer all, or a portion of its rights hereunder as the Developer, by an instrument expressly assigning such rights as the Developer to such assignee.

(L) "Exterior Unit Areas" shall mean and include, only with respect to the buildings comprising a portion of the Condominium that contain a Unit or Units, the following areas:

(1) the area beginning from the exterior boundaries of each Unit and running from such exterior Unit boundary to the exterior surface of the exterior

walls and the exterior surface of the roof of the building (including shingles or other roofing materials) in which such Unit is contained, CONDO Book 2 Page 153

(2) the slab of each such building;

(3) the lawn and landscaping areas immediately in front of and to the rear of such building extending (i) out in front of such building to the sidewalk running parallel to such building and (ii) into the rear area behind such building to the sidewalk running parallel to such building or the curb located behind such building, whichever is closer (collectively, the "Lawn Area"); provided, however that (a) in the event the Lawn Area for any such building overlaps with the Lawn Area of any other such building, then the boundary for the Lawn Areas between such buildings shall be equidistance from such buildings, (b) in no event shall any Lawn Area extend more than twenty feet (20') from the foundation of the front or rear of any such building, and (c) in no event shall any Lawn Area extend into any sidewalks running along any roadways or any parking areas that are intended for common use by all Owners and their guests and tenants; and

(4) the porch, patio, courtyard or balcony, if any, of each such building that is not otherwise accessible solely from one particular Unit.

(M) "Land" shall mean the parcel or tract of real estate described in Exhibit "A" to this Declaration, submitted to the provisions of the Declaration and the Act.

(N) "Limited Common Elements" shall mean and include any area designated by this Declaration and the Condominium Documents, including the Plat and Plan, as Limited Common Elements and any amendments thereto, and any areas defined in the Act as Limited Common Elements for the exclusive use of one or more, but fewer than all of the Units. The Limited Common Elements shall include, among any other property so designated, any balcony or terrace accessible solely from one particular Unit, chute, flue, duct, wires, conduits, bearing walls, bearing columns, or any other fixture serving only a specific 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 Unit to which it was originally assigned as a Limited Common Element.

(O) "Limited Common Expenses" shall mean the expenses arising out of the ownership of the Limited Common Elements and 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.

(P) "Members" shall mean and refer to the Association's members.

8003 159

(Q) "Mortgage" shall mean a first lien mortgage, but ~~not~~ a second mortgage, third mortgage, or other subordinate lien, on one (1) or more Units.

(R) "Mortgagee" shall mean a holder of a Mortgage who has given written notice to the Association that the Mortgagee is the holder of a Mortgage affecting all or any part of the Condominium Property as hereinafter provided, or any insurer or guarantor of such a Mortgage.

(S) "Owner" or "Unit Owner" shall mean and refer to every person or entity who is a record Owner of fee simple title interest in a Unit.

(T) "Phase II" shall have the meaning ascribed to such term in Section 4.05 hereof.

(U) "Phase III" shall have the meaning ascribed to such term in Section 4.06 hereof.

(V) "Phase IV" shall have the meaning ascribed to such term in Section 4.07 hereof.

(W) "Plan" or "Plat" or "Plan and Plat" shall mean the Plan and Plat showing the Units, 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 may be amended.

(X) "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.

(Y) "Real Property Records" shall mean the records of the Office of the Judge of Probate of Lee County, Alabama.

(Z) "Rules and Regulations" shall mean the Rules and Regulations Concerning the Use of Creekside of Auburn Condominiums, which are deemed necessary for the enjoyment of the Condominium Property, provided they are not in conflict with the Act or the other Condominium Documents.

(AA) "Unit" or "Condominium Unit" shall mean the parts of the Condominium Property as set forth herein and shown in the Plan or Plat as being intended for the exclusive ownership and possession by an Owner. Each Unit shall consist of the volumes or cubicles of space which lie between the lower, upper and lateral or perimetrical boundaries described as follows:

(1) The upper and lower boundaries extend to their planer intersections with the perimetrical boundaries as follows: ~~Section 1.03~~ CONDO Book & Page

(a) the upper boundary shall be the plane of the lower unfinished surface of the ceiling (and in the case of any two-level Units, the ceiling of the second level);

(b) the lower boundary shall be the plane of the upper surface of the supportive structure which serves as the Unit's floor (and in the case of any two-level Units, the floor of the first level), excluding any floor covering such as carpeting, vinyl, hardwood or ceramic tile, which are all deemed to be part of the Unit.

(2) 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 and any common walls separating the tenants, (excluding gypsum board, paint, wallpaper and light fixtures) extended to their planer intersection with each other and with the upper and lower boundaries which are all deemed to be part of the Unit.

Units shall include all non-structural interior partition walls located within the boundaries of the Unit 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, gypsum board, 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 Unit and serving only the Unit; and the mechanical systems and installations providing electrical power, gas, water, heating and air conditioning service to the Unit, including the individual air conditioning condensing unit and hot water heater appurtenant to each Unit, even though such equipment may be located outside the boundaries of the Unit, provided that no pipes, wires, conduits, ducts, flues, shafts and other facilities situated within such Unit, and forming a part of any system serving one or more other Units or the Common Elements, shall be deemed to be a part of such Unit; and, provided further, that no load bearing wall providing structural support and located within the boundaries of the Unit shall be deemed part of the Unit.

Article II

Description of Improvements

2.01 Identification of Units. A plat and plan 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 and Plat. The legal description of each Unit shall consist of the identifying number or letter for such as shown on the

the use of the Units, 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 Units, 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 more particularly described in Section 3.12 hereof.

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

3.03 Additional Utility Easement. There may be utility equipment located in or 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 the Developer and the Owner 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 its present location unless the written approval of the Board of Directors shall have first been obtained. The Association shall have the right to grant such permits, licenses and other easements over the Common Elements for utilities, roads and other purposes necessary for the due and reasonable operation of the Condominium

3.04 Easements for Ingress and Egress. The Common Elements shall be, and the same are hereby declared to be, subject to a perpetual nonexclusive easement of way over all roads, parking areas, walkways, halls, stairways, and other Common Elements, in favor of all Owners and the Developer for all proper and nominal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners and the Developer, subject to all restrictions in the Condominium Documents. The Limited Common Elements shall be, and the same are hereby declared to be, subject to a nonexclusive easement in favor of the Association for repair, service and other uses reasonably intended or required by the Association.

3.05 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.

3.06 Easements for Encroachments. To the extent that any Unit, Common Element or Limited Common Element encroaches on any other Unit, 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, and the same is hereby declared, for the encroachment and/or the maintenance of the same, so long as the encroaching Unit, Common Element or Limited Common Element stands. A valid easement shall not relieve an Owner of liability for such Owner's or such Owner's agent's negligence or intentional acts in

Plat and Plan, the name of the Condominium, the name of the county in which the Land is situated, the name of the office in which this Declaration is recorded, and the deed book and page number where the first page of this Declaration is recorded.

2.02 Balconies and Terraces. Exterior balconies and terraces as shown by the Plat and Plan are Limited Common Elements. Exterior balconies or terraces shall be deemed to be a Limited Common Element appurtenant to the Unit from which it is directly accessible. Each Unit Owner shall be entitled to an exclusive easement for the use of any exterior balcony or terrace directly accessible from such Owner's Unit, but such right shall not entitle an Owner to construct anything thereon nor to change any structural part thereof.

2.03 [Intentionally Deleted].

2.04 Ownership of Common Elements and Limited Common Elements. Each Owner shall own an undivided interest in the Common Elements and Limited Common Elements with all other Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements and Limited Common Elements for all purposes incident to the use and occupancy of the Owner's Unit as herein provided, without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run with the Unit. The extent or amount of such ownership shall be expressed by a percentage relating to each Unit as set forth on Exhibit "D" hereto and made a part hereof for all purposes, and shall remain constant, unless changed in accordance with the provisions hereof or by the unanimous approval of all Owners and Mortgagees. The percentage ownership in the Common Elements of each Owner as set forth on Exhibit "D" was calculated by dividing the square footage of each particular Unit by the total square footage of all Units. The Owners of Units with Limited Common Elements which are appurtenant to such Unit as designated or described herein and/or shown upon the Plan and Plat shall have the exclusive right to use such Limited Common Elements so designated or described unless changed by the Developer as permitted herein or by the unanimous approval of the Owners and their respective Mortgagees. Each Owner of a Unit to which a Limited Common Element is attached shall have the exclusive right to use the Limited Common Element for all purposes incident to the use and occupancy of such Owner's Unit as herein provided without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run with the Units to which the Limited Common Elements are attached.

2.05 Exterior Unit Areas. The Exterior Unit Area associated with each building containing a Unit or Units shall be a Limited Common Element appurtenant solely to the Unit or Units contained in the building to which the Exterior Unit Area is associated.

Article III Easements; Title Exceptions

3.01 Easements and Restrictions. The Units, 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

cases of willful and intentional misconduct by an Owner or an Owner's 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 on parts of the Common Elements or Limited Common Elements upon any Unit or of any Unit upon any of the other Units, 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.

3.07 Easement of Support. Each Unit, Common Element and Limited Common Element shall have, and the same is hereby declared, an easement of support from every other Unit, Common Element, and Limited Common Element which provide such support.

3.08 Easement for Repair Purposes. An easement is hereby reserved over and through all Units in favor of the Association for purposes of permitting the Association to access any Common Element or Limited Common Element for maintenance, repair or replacement purposes; provided, however, that the Association shall take advantage of and use such easement only when any such Common Element or Limited Common Element is not otherwise reasonably accessible without entering into any such Unit; and provided, further, however, that any entry into a Unit by the Association or its agents pursuant to this Section shall occur in such a manner as to reasonably minimize the disruption caused to any lawful occupants of such Unit except in the event of an emergency wherein there is the potential of damage to life or property, the determination of which shall be in the sole and absolute discretion of the Association, in which event the Association and its agents shall be permitted to make such entry into such Units as is reasonably necessary to address and remedy said emergency.

3.09 Easement for Pest Control Services. The Association may, but shall not be obligated to, dispense chemicals for the extermination of insects and pests within the Units and Common Elements. In the event the Association chooses to provide such pest control services, the Association and its duly authorized contractors, representatives and agents shall have, and the same is hereby declared, an easement to enter Units for the purpose of dispensing chemicals for the exterminating of insects and pests within the Units and Common Elements. Unit Owners shall either provide a key to the Unit for purpose of such entry or have someone available at such times as are designated by the Board of Directors to allow entry in to the Unit for this purpose. The Association shall not be liable for any illness, damage or injury caused by the dispensing of these chemicals for this purpose.

3.10 Easement for Construction of Additional Phases. As described in greater detail in Section 4.05, Section 4.06 and Section 4.07 hereof, the Developer has reserved development rights to construct Phase II, Phase III and Phase IV, respectively. Therefore, in addition to any easement rights granted in favor of the Developer by the Act, an easement is hereby reserved for the benefit of the Developer and its contractors and subcontractors over and across the Land for all purposes necessary to enable the Developer to construct and develop Phase II, Phase III and/or Phase IV, as the case may be. During the period of any construction activities relating to any Phase II, Phase III or Phase IV, the Developer shall have the right to fence in Phase II, Phase

III and/or Phase IV, as applicable, and to restrict access to such properties during the pendency of such construction activities as the Developer shall deem appropriate and necessary in its sole and absolute discretion.

3.11 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 herein provided even though no specific reference to such easements and rights appear in such instrument. Any conveyance, encumbrance, judicial sale or other transfer (voluntarily or involuntarily) of an undivided interest in a Common Element shall be void unless the Unit to which that interest is allocated is also transferred to the same recipient as the undivided interest in the Common Element so transferred. The Owners do hereby designate 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.

3.12 Title Exceptions. In addition to the items set forth in this Article III, the Condominium Property, the Units, Common Elements and Limited Common Elements are further declared to be subject to the following restrictions, easements, conditions and limitations:

(A) The terms, conditions, covenants, and provisions of the Condominium Documents;

(B) Sewer, water, electric, telephone, and other utility easements, if any, now or hereafter placed of record, including the right to erect, maintain and install all electrical, telephone and television wires, cables and conduits, sewers, water pipes and drains, and other improvements for public conveniences or utilities in, on, under, over, and through the Condominium.

(C) Reservation of all oil, gas, and other minerals, together with all rights of ingress and egress for the use and enjoyment of same, which have heretofore been reserved or conveyed to others;

(D) Any encroachments or facts which might be revealed by an accurate survey or personal inspection of the Condominium;

(E) Ad valorem taxes which are a lien upon the Condominium, but are not yet due and payable;

(F) Building setback lines and drainage and utility line easements as shown on the Plat or Plan to be recorded, if any;

(G) That certain Mortgage, Assignment of Rents and Security Agreement from Developer to Wachovia Bank dated August 3, 2006 and recorded in Book 3359, Page 346, as amended by that certain Amendment to Mortgage by and between Developer and Wachovia Bank dated April 10, 2007, and recorded in Mortgage Book 3438, Page 801 and that certain UCC-1 Financing Statement from Developer to Wachovia Bank and

(T) The Sewage, Drainage, and Utility Easement from Holiday Mobile Home Estates, Inc. to Sun Self Storage, Inc. dated December 16, 2002 and filed for record in Book 2233, at Page 84;

(U) All sanitary storm sewers located throughout the property as shown on that certain plat or survey prepared by Roger Robertson, land surveyor No. 15722 and dated March 8, 2006;

(V) The approximate location of the 500 year flood zone as shown on that certain plat or survey prepared by Roger Robertson, land surveyor No. 15722 and dated March 8, 2006; and

(W) Any other encroachments, overlaps, boundary line disputes, and any other matters disclosed by that certain plat or survey prepared by Roger Robertson, land surveyor No. 15722 and dated March 8, 2006.

(X) Utility Easement Agreement between Retreat of Auburn, LLC and Momentum Telecom, Inc. dated as of January 18, 2007 and filed for record at Book 2313 at Page 484 in the Office of the Judge of Probate of Lee County, Alabama.

(Y) Drainage and Utility Easement between Retreat of Auburn, LLC and The City of Auburn, dated April 24, 2007 and filed for record at Book 2314 at Page 857 in the Office of the Judge of Probate of Lee County, Alabama.

All recording references are to the Real Property Records.

Article IV **Special Declaration and Development Rights**

4.01 **Amendment of Condominium Plan.** The Developer reserves the right to change the interior design and arrangement of all Units, including without limitation, the erection or removal of interior walls, fixtures, plumbing, electrical wiring, doors, flooring, heating and air conditioning, ventilation and ducts, to alter the boundaries between Units and to increase or decrease the number of Units so long as the Developer, or its affiliates or owners, owns the Units so altered. Changes in the boundaries between Units, as hereinbefore provided, shall be reflected by an amendment to the Plan and/or Plat and, if necessary, an amendment to this Declaration. If two (2) adjoining Units are combined by the Developer to make one (1) larger Unit, the Association's assessments and the ownership interest in the Common Elements attributable to the combined Unit shall remain as though there are two (2) separate Units. An amendment to the Plan or this Declaration reflecting an alteration of the boundaries of the Units owned by the Developer must 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; provided, however, that, except as is set forth in Section 4.05 and Section 4.06 hereof, any change which shall result in a change in the undivided interest in the Common Elements or the Limited Common Elements or a change in the share of the Common Expenses or the Limited

recorded in UCC Book 19, Page 807—each Unit shall be released from these liens when the Unit is sold;

(H) That certain map or plat of a redivision of Parcels 2 and 3 of D.F.C. Subdivision No. 1, First Revision, Auburn, Lee County, Alabama as recorded in Plat Book 10, at Page 183;

(I) That certain map or plat of D.F.C. Subdivision No. 1, First Revision, as recorded in Plat Book 7, at Page 69;

(J) That certain map or plat of Temple Street Subdivision, Auburn, Lee County, Alabama as recorded in Plat Book 23, at Page 97;

(K) The right of way from Diversified Finance Corporation to Alabama Power dated January 25, 1967 and filed for record in Book 761, at Page 94;

(L) The right of way from Diversified Finance Corporation to Alabama Power dated October 6, 1970 and filed for record in Book 842, at Page 363;

(M) The drainage and utility easement from Matthew Jenkins and Roberta Jenkins as trustees of the Jenkins Family Trust to the City of Auburn dated October 8, 2003 and filed for record in Book 2246, at Page 382;

(N) The drainage and utility easement from Holiday Mobile Estate, Inc. to the City of Auburn dated April 5, 2004 and filed for record in Book 2256, at Page 181;

(O) The drainage and utility easement from Holiday Mobile Estate, Inc. to the City of Auburn dated April 21, 2002 and filed for record in Book 2266, at Page 31;

(P) The drainage and utility easement from Sun Self Storage, Inc. to the City of Auburn dated December 31, 2002 and filed for record in Book 2250, at Page 661;

(Q) The overhead power and transmission line encroachments running along the southern and northern survey lines as shown by that certain plat or survey prepared by Roger Robertson, land surveyor No. 15722 and dated March 8, 2006;

(R) The storm drain encroachment on the north east corner of the property on that certain plat or survey prepared by Roger Robertson, land surveyor No. 15722 and dated March 8, 2006;

(S) The drainage encroachments on the east property line as shown on that certain plat or survey prepared by Roger Robertson, land surveyor No. 15722 and dated March 8, 2006;

Common Expenses with respect to Owners of Units other than the Developer at the time of such change or which shall result in the alteration of boundaries of Units (other than the common walls separating the Units owned by the Developer) may not be made without an amendment of this Declaration approved by the Owners and Mortgagees in the manner elsewhere required herein.

4.02 Option to Increase Size of Units and Walls. The Developer expressly reserves the right until the second (2nd) anniversary of the recordation of this Declaration to increase the size of any Unit created by this Declaration and owned by the Developer and to increase the height of any wall on the Property without the consent of any Owner or Mortgagee. There is no limitation on this option to increase the size of the Units.

4.03 Use for Sales Purposes. All Units and the Common Elements shall be subject to the statutory right concerning sales and management offices and models in Units and the Common Elements in favor of the Developer provided in § 35-8A-215 of the Act. The Developer expressly reserves the right to use one (1) or more Units owned by the Developer as models, and any portion of the Common Elements or one (1) or more Units for management offices and/or sales and leasing offices. The Developer reserves the right to relocate offices and/or models from time to time within the Property. Upon relocation or sale of a model, the management office or sales office and the furnishings thereof may be removed by the Developer. The Developer further reserves the right to maintain on the Common Elements advertising signs in any location or locations and from time to time to relocate and/or remove the same, all in the sole discretion of the Developer.

4.04 Use by the Developer. Subject to the rights of the Mortgagees hereunder, neither the Owners nor the Board of Directors nor their use of the Condominium Property or application of this Declaration shall interfere with the completion of the contemplated improvements and sales of the Units in the Condominium until the Developer has completed all of the Developer's contemplated improvements and closed the sales of all of such Units. Subject to the rights of the Mortgagees hereunder, 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, and the display of signs thereon and therein. These special declarant rights exist so long as the Developer owns any Unit in the Condominium or holds any Unit in the Condominium for sale in the ordinary course of business or leases any Unit it owns. 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, including leasing such Unit(s) to the Association for use as a management, sales, or leasing office.

4.05 Development Right—Phase II. The Developer hereby reserves the right to add up to one hundred four (104) additional Units to the Condominium, as Developer may elect in its sole discretion ("Phase II"). Any such additional Units shall be built upon that portion of the Land more particularly shown and labeled as "Phase II" on Exhibit "C" attached hereto and incorporated herein by reference (the "Phase II Land"); provided, however, that the Developer expressly reserves the right to construct such additional Units anywhere on the Phase II Land

that Developer, in its sole and absolute discretion, deems necessary and appropriate. All such additional Units will be restricted to residential use and subject to all other restrictions herein. No such additional Units, structures or improvements may be erected or constructed within the Phase II Land by the Developer except Units, Common Elements, Limited Common Elements, partitions and other structures and improvements compatible with those in other portions of the Land (in terms of quality of construction, the principal materials to be used, and architectural style) except to the extent that deviations may be rendered necessary or desirable by the requirements of building codes or other legal requirements, by technological advances, or by the availability of substitute materials of equal or better quality or performance characteristics than those used in other portions of the Condominium. Any additional Units and any additional Common Elements and Limited Common Elements created within the Phase II Land will be substantially identical to those currently in existence, in external appearance, except that their size, configuration, proportions and number of rooms may be altogether different and no assurances are given with regard to such. The Developer reserves the right to create Limited Common Elements within the Phase II Land and to designate Common Elements therein which may subsequently be assigned as Limited Common Elements and/or to designate Common Elements in areas reserved for additional Units. In the event Phase II is constructed and added to the Creekside of Auburn Condominium regime, the allocated interests in the Common Elements and the Limited Common Elements, as is currently set forth on Exhibit "D" attached to the Declaration, shall be reallocated in accordance with the current method of such allocation set forth in Section 2.04 of the Declaration. In the event Developer exercises this development right, Developer may, in its sole discretion, elect to build and construct Units in any one or more portions of the Phase II Land without building and constructing Units in the entirety of the Phase II Land all at once. Developer expressly reserves the right to exercise this development right on multiple occasions until such time as either Developer has constructed a total of one hundred four (104) Units on the Phase II Land and added such Units to the Condominium or the rights reserved by Developer relative to Phase II expire and terminate. The Developer's option to add Phase II, or any portion thereof, to the Condominium shall expire on the tenth (10th) anniversary of the recording of this Declaration unless, prior to that date, the Developer records an amendment to this Declaration or other appropriate document relinquishing any right the Developer may have to construct and dedicate such additional Units or improvements. Should the Developer elect to add additional Units to the Condominium as provided herein, it will do so by complying with the provisions of Alabama Code § 35-8A-210 (1975). Any assurances made in this paragraph will only apply if the Developer adds additional Units to the Condominium.

4.06 Development Right—Phase III. The Developer hereby reserves the right to add up to one hundred twelve (112) additional Units to the Condominium, as Developer may elect in its sole discretion ("Phase III"). Any such additional Units shall be built upon that portion of the Land more particularly shown and labeled as "Phase III" on Exhibit "C" attached hereto and incorporated herein by reference (the "Phase III Land"); provided, however, that the Developer expressly reserves the right to construct such additional Units anywhere on the Phase III Land that Developer, in its sole and absolute discretion, deems necessary and appropriate. All such additional Units will be restricted to residential use and subject to all other restrictions herein. No such additional Units, structures or improvements may be erected or constructed within the Phase III Land by the Developer except Units, Common Elements, Limited Common Elements, partitions and other structures and improvements compatible with those in other portions of the

Land (in terms of quality of construction, the principal materials to be used, and architectural style) except to the extent that deviations may be rendered necessary or desirable by the requirements of building codes or other legal requirements, by technological advances, or by the availability of substitute materials of equal or better quality or performance characteristics than those used in other portions of the Condominium. Any additional Units and any additional Common Elements and Limited Common Elements created within the Phase III Land will be substantially identical to those currently in existence, in external appearance, except that their size, configuration, proportions and number of rooms may be altogether different and no assurances are given with regard to such. The Developer reserves the right to create Limited Common Elements within the Phase III Land and to designate Common Elements therein which may subsequently be assigned as Limited Common Elements and/or to designate Common Elements in areas reserved for additional Units. In the event Phase III is constructed and added to the Creekside of Auburn Condominium regime, the allocated interests in the Common Elements and the Limited Common Elements, as is currently set forth on Exhibit "D" attached to the Declaration, shall be reallocated in accordance with the current method of such allocation set forth in Section 2.04 of the Declaration. In the event Developer exercises this development right, Developer may, in its sole discretion, elect to build and construct Units in any one or more portions of the Phase III Land without building and constructing Units in the entirety of the Phase III Land all at once. Developer expressly reserves the right to exercise this development right on multiple occasions until such time as either Developer has constructed a total of one hundred twelve (112) Units on the Phase III Land and added such Units to the Condominium or the rights reserved by Developer relative to Phase III expire and terminate. The Developer's option to add Phase III, or any portion thereof, to the Condominium shall expire on the tenth (10th) anniversary of the recording of this Declaration unless, prior to that date, the Developer records an amendment to this Declaration or other appropriate document relinquishing any right the Developer may have to construct and dedicate such additional Units or improvements. Should the Developer elect to add additional Units to the Condominium as provided herein, it will do so by complying with the provisions of Alabama Code § 35-8A-210 (1975). Any assurances made in this paragraph will only apply if the Developer adds additional Units to the Condominium.

4.07 Development Right—Phase IV. The Developer hereby reserves the right to construct and add additional Common Elements to the Condominium, as Developer may elect in its sole discretion ("Phase IV"). Any such additional Common Elements shall be built upon that portion of the Land more particularly shown and labeled as "Phase IV" on Exhibit "C" attached hereto and incorporated herein by reference (the "Phase IV Land"); provided, however, that the Developer expressly reserves the right to construct such additional Common Elements anywhere on the Phase IV Land that Developer, in its sole and absolute discretion, deems necessary and appropriate. All such additional Common Elements will be subject to all other restrictions herein. No such additional Common Elements may be erected or constructed within the Phase IV Land by the Developer except Common Elements compatible with those in other portions of the Land (in terms of quality of construction and the principal materials to be used) except to the extent that deviations may be rendered necessary or desirable by the requirements of building codes or other legal requirements, by technological advances, or by the availability of substitute materials of equal or better quality or performance characteristics than those used in other portions of the Condominium; provided, however, that the Developer makes no assurances as to

the size or external appearance of any additional Common Elements created within the Phase IV Land. The Developer also reserves the right to create Limited Common Elements by designating any of the Common Elements constructed within and as a part of Phase IV as Limited Common Elements, any of which may subsequently be assigned as Limited Common Elements to particular Units. The Developer's option to add Phase IV to the Condominium shall expire on the tenth (10th) anniversary of the recording of this Declaration unless, prior to that date, the Developer records an amendment to this Declaration or other appropriate document relinquishing any right the Developer may have to construct and dedicate such additional Common Elements. Should the Developer elect to add additional Common Elements to the Condominium as provided herein, it will do so by complying with the provisions of Alabama Code § 35-8A-210 (1975). Any assurances made in this paragraph will only apply if the Developer adds additional Common Elements to the Condominium.

4.08 Timing of Additional Phases. Notwithstanding anything contained in Section 4.05, Section 4.06 or Section 4.07 to the contrary, the timing of the addition to the Condominium of Phase II, Phase III, or any portion thereof, and/or Phase IV shall be in the sole and absolute discretion of the Developer, and the Developer makes no representations or warranties with respect thereto. The Developer shall have the right, but not the obligation, to add Phase II, Phase III, or any portion thereof, and/or Phase IV to the Condominium in any order, and the ultimate order of the addition to the Condominium of such additional phases, to the extent they are even added at all, shall be in the sole and absolute discretion of the Developer.

Article V Organization and Management

5.01 Management of the Condominium Property. The operation and administration of the Common Elements and the Condominium Property shall be performed by the Association. The powers and duties of the Association shall include those set forth in the Act, the Alabama Nonprofit Corporation Act, Ala. Code §§ 10-3A-1 to 225 (1975), this Declaration, the Articles and the Bylaws.

5.02 Members. The Members of the Association shall constitute all record Owners of the Units. Change of membership in the Association shall be established by recording in the Real Property Records, the deed or other instrument establishing record fee simple 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 this Declaration, the Bylaws and the Rules and Regulations. The votes shall be cast in the manner provided in the Articles and Bylaws. Each Unit shall be allocated one (1) vote.

5.03 Bylaws. The Bylaws of the Association shall be in the form attached as Exhibit "B" to this Declaration, and made a part hereof for all purposes, and may be amended from time to time as set forth therein.

5.04 Voting Requirements. Notwithstanding anything contained herein to the contrary, unless a specific voting requirement in excess of a simple majority is required for either a vote of the Board of Directors or a vote of the Members, any such voting requirements shall be construed to require only a simple majority vote.

Article VI Assessments

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

6.02 Assessments. All assessments for the payment of Common Expenses shall be levied annually and paid monthly by the Owners of all Units, and unless specifically otherwise provided for in this Declaration, each Owner of a Unit and each Owner's Unit shall bear the same percentage share of such assessment as the percentage share of ownership for the undivided interest in the Common Elements and Limited Common Elements appurtenant to said Unit; provided, however, the Developer and the Association shall have the right, but not the obligation, to elect not to make an assessment for Common Expenses or required reserves for such period of time as they shall choose, subject to the provisions of Section 15.03(C) hereinbelow, upon condition that the Developer pay and guarantee all Common Expenses and required reserves incurred prior to making assessments therefor against Unit Owners. The assessments for Common Expenses shall be payable over the course of the year in advance in monthly installments commencing on the date of the purchase of a Unit or in such other installments and at such times as may be determined by the Board of Directors in accordance with the Association's Bylaws.

6.03 Required Reserve Funds and Working Capital Fund. Assessments levied by 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 may be payable in regular installments rather than by special assessments. Also, a working capital fund shall be established and each Unit Owner purchasing a Unit from the Developer shall pay a one (1) time assessment equal to two (2) months' assessment of Common Expenses at the time of closing the purchase by each Owner of a Unit to be used by the Association as working capital, the balance of which shall be transferred to a segregated fund upon Developer's transfer of control of the Association to the Unit Owners. The Developer is prohibited from using the working capital funds to defray any of its expenses, including, without

limitation, reserve contributions required by applicable law, if any, construction costs or any amounts necessary to make up any budget deficits while it is in control of the Association. When unsold Units are sold by the Developer, the Developer may reimburse itself for funds it paid the Association for an unsold Unit's share of the working capital fund by using funds collected at closing when such Unit is sold.

6.04 Annual Budget. Within ninety (90) days prior to the beginning of each fiscal year of the Association, the Board of Directors shall adopt a proposed annual budget for the next fiscal 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 therefor if the Board of Directors shall so provide, 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, copies of said budget shall be made available to each Member. The Board of Directors shall set a date for a meeting of the Members to consider ratification of the budget not less than fourteen (14) nor more than thirty (30) days after mailing or delivering the budget to the Members. Unless at such meeting a majority of the Members present in person or by proxy reject the budget, the budget is deemed ratified. In the event the proposed budget is rejected, the budget for the preceding 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. 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 nonpayment of any Owner's assessment, the Board of Directors shall have the authority to levy such additional assessments as it shall deem necessary in accordance with the applicable provisions of the Condominium Documents and the Act.

6.05 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.

6.06 Detailed Records. The Association shall keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Common Elements and Limited 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, together with other books, records and financial statements of the Association shall be available for examination by any Member or Member's representative, or by holders, insurers and guarantors of Mortgages secured by Units, during regular business hours in a location designated by the Board of Directors in Lee County, Alabama.

6.07 Share of Common Expenses and Limited Common Expenses. Each Unit Owner shall be assessed and is individually liable for a proportionate share of the Common Expenses

manner as real estate mortgages in the State of Alabama. The lien granted to the Association shall further secure such advances for taxes and payment on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to protect and preserve its lien, and the Association shall further be entitled to interest at the maximum legal rate on judgments or the rate established by the Board of Directors, whichever is less, 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 such interest in any Unit shall be acquired expressly subject to the lien. The lien herein granted to the Association shall be effective from and after the time of the recording of this Declaration in the Real Property Records, 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 violations of the Rules and Regulations, interest, costs, reasonable attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided.

6.10 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 VII Maintenance and Operation of the Condominium Property

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

(A) the Common Elements which by definition excludes the surfaces of all interior walls, floors, ceilings, entrance doors, and windows of the Units (except the painting of the exterior faces of the exterior doors, window frames, or shutters, which shall be the responsibility of the Association);

(B) incidental damage caused to a Unit by any work done by the Association;
and

(C) portions of all Units contributing to the support of the building, the outside walls and load bearing columns, excluding, however, interior wall and floor surfaces.

with each Unit Owner's proportionate share of Common Expenses being the same percentage as the Unit Owner's ownership interest in the Common Elements as set forth on Exhibit "D" attached hereto. Each Unit Owner shall be assessed and is individually liable for a proportionate share of the Limited Common Expenses with each Unit Owner's proportionate share of Limited Common Expenses being the same percentage as the Unit Owner's ownership interest in the Common Elements as set forth on Exhibit "D" attached hereto.

6.08 Payment of Common Expenses and Limited Common Expenses. All Unit Owners shall be obligated to pay the assessment for Common Expenses or for the Limited Common Expenses adopted by the Board of Directors pursuant to the terms of this Declaration. No Unit Owner may be exempted from liability for such Unit Owner's contribution toward Common Expenses or Limited Common Expenses by waiver of the use or enjoyment of any of the Common Elements, Limited Common Elements or by abandonment of an Owner's Unit. No Unit Owner shall be liable for the payment of any part of the Common Expenses or Limited Common Expenses assessed against such Owner's Unit subsequent to a sale or other conveyance by the Owner of such Unit. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against such Unit 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 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 the 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.

6.09 Default in Payment of Assessments. The obligation to pay any assessment or installment thereof due the Association shall be in default if such Assessment or any installment thereof is not paid to the Association on or before the due date for such payment. When in default, the delinquent assessment or delinquent installment due the Association shall bear interest at the rate established by the Board of Directors, not to exceed the maximum interest rate per annum allowed by law, until such delinquent assessment or installment 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 and court costs incurred by the Association in collecting delinquent assessments and enforcing the same 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

(2) plumbing, hot water heater, heating, air conditioning and electrical systems serving only that Unit, whether located within or without said Unit, including the fuse boxes, wiring, flues, and all other plumbing, electrical, gas or mechanical systems serving only that Unit.

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:

(1) to perform all applicable maintenance, repairs and replacements which are the Unit Owner's obligations under subparagraph (A) of this Section and subparagraphs (A) and (B) of Section 7.02 hereof;

(2) to pay all utilities as herein provided and all taxes levied against the Owner's Unit;

(3) not to make or cause to be made repairs to any plumbing, electrical, heating, ventilation or air conditioning system located outside the Owner's Unit, but required to be maintained by such Unit Owner elsewhere herein, except by licensed plumbers or electricians authorized to do such work by the Association or its delegate;

(4) not to make any addition or alteration to such Unit Owner's 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 or the Developer without the prior written consent of the Association and all Unit Owners affected thereby.

(5) not to make any alteration, addition, improvement, decoration, repair, replacement or change to the Common Elements, Limited Common Elements, or to any outside or exterior portion of the Unit, excluding any alteration or addition made pursuant to the procedure described in subparagraph (4) above and including, but not limited to, altering in any way exterior doors, windows, or the exterior faces of the exterior doors or windows, affixing outside shutters to windows or painting any part of the exterior of an Owner's Unit, without the prior written consent of the Association; provided that if such consent is granted, the Unit Owner shall use only a contractor approved by the Association, who shall comply with the Rules and Regulations with respect to the work which may be approved 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

7.02 Maintenance of Limited Common Elements. The Limited Common Elements shall be maintained in accordance with the following:

(A) Each Unit Owner shall keep the Limited Common Elements appurtenant to his Unit, if any, in a neat and presentable appearance and shall not allow such area to be used for anything other than its intended use;

(B) Each Unit Owner of a Unit that is located in a building in which no other Unit is located shall be solely responsible for the replacement of all light bulbs located on the Exterior Unit Area of such Unit; provided, however, that if such Unit Owner fails to perform such replacements, the Association shall have the right, but not the obligation to make such replacements at the sole cost and expense of such Unit Owner and the cost of the Association in performing any such replacements shall be a special assessment against the Unit Owner responsible therefor; and

(C) The Association shall perform all other maintenance and repair of the Limited Common Elements, including, without limitation, the painting of any Exterior Unit Areas, the maintenance of any lawn or landscaping comprising a portion of Exterior Unit Areas, and the maintenance of any roof comprising a portion of any Exterior Unit Areas, the expense of all of which shall be a Limited Common Expense.

7.03 Damage Caused by Unit Owner, Tenant, Etc.. Nothing in this Article VII shall relieve a Unit Owner of liability for damage to the Common Elements or Limited Common Elements caused by the Unit Owner, the Unit Owner's family members, guests, invitees, lessees or licensees as a consequence of the negligence, recklessness or willful misconduct of such person. The cost of repair for any damage so caused by the Unit Owner, the Unit Owner's family members, guests, invitees, lessees or licensees shall be a special assessment against the Unit Owner responsible therefor.

7.04 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 such Owner's Unit, and all components thereof, in good and tenantable condition and repair, and shall be responsible for the repair, maintenance and replacement, if necessary, of the following items in such Owner's Unit:

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

the subcontractors or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise; and

(6) 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 forty-five (45) days after such request, but its failure to do so within the stipulated time shall not constitute the consent of the Association to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any Unit shall be executed by the Association, without, however, its incurring any liability on the part of the Board of Directors or any one (1) of them or the Association to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim of injury to a person or damage to property arising therefrom. The review by the Association under this Section 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 the Developer.

7.05 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 X of this Declaration, the Association shall not make any material structural alterations, capital additions or capital improvements to the Common Elements or Limited Common Elements (other than for the purpose of replacing, restoring or rehabilitating portions of the Common Elements or Limited Common Elements which is in accordance with this Declaration and which does not require an expenditure of more than Fifty Thousand and No/100 Dollars (\$50,000.00), exclusive of any funds applied from the reserves maintained hereunder) unless the same is authorized by the Board of Directors and ratified by the affirmative vote of the voting Members casting not less than sixty percent (60%) of the total votes of the Members of the Association present at any regular or special meeting of the Members called for that purpose at which a quorum is present and approved by a majority of the Mortgagees eligible to vote therefor. The cost of such alterations, deletions and improvements shall be assessed against the Owners of Units as provided herein, except as otherwise provided in this Section. 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 in the exercise of its sole and absolute discretion. 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, ratified by not less than sixty percent (60%) of the total votes of the Members present at any regular or special meeting of the Members called for that purpose at which a quorum is present, approved by a majority of the Mortgagees present in

person or via proxy and eligible to vote therefor and also ratified by not less than sixty percent (60%) of the total votes of the Members 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 Members.

7.06 Utilities. Each Unit Owner shall be required to pay all charges for utilities, including but not limited to electricity, gas, cable television, internet, and telephone service, used or consumed in an Owner's Unit; provided, however, that the Association shall have the right, but not the obligation, to enter into a bulk services agreement with a provider for the provision of cable television, internet and/or telephone services to each Unit in the Condominium, in which event the costs of such agreement shall be assessed as a Common Expense to all Owners. The utilities serving the Common Elements only, for example, water, sewer, garbage and trash collection, together with any other utilities, alarm services, cable or other television service or similar services determined by the Board, from time to time, to be provided to all Unit Owners shall be separately metered or charged 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 use of the utility or any other formula the Association may deem appropriate.

Article VIII **Restrictions on Use**

8.01 Rules and Regulations. The Association is authorized to promulgate, amend and enforce the Rules and Regulations provided the 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, occupants, 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 (1) person shall constitute such person's agreement to be subject to and bound by the provisions of the Condominium Documents, 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 an Owner, an Owner's family members, guests, invitees, lessees or renters, including the payment of penalties for such violations, and, to the extent permitted by the Act, the Association shall have a lien against the Owner's Unit for any unpaid penalties.

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

(A) Each Unit is hereby restricted to residential use and the parking spaces located upon the Common Elements shall be used exclusively for the parking of passenger automobiles (including sport utility vehicles, pick-up trucks and similar vehicles).

(B) There shall be no obstruction of the Common Elements or Limited Common Elements, nor shall anything be placed, kept or stored in the Common Elements or Limited Common Elements (except that outdoor furniture appropriate to the character and appearance of the Condominium may be utilized by Owners on the balconies appurtenant to their Units), nor shall anything be constructed on or planted in or removed from the Common Elements or Limited Common Elements, nor shall the Common Elements in any other way be altered without the prior written consent of the Association. Blinds or shutters located on the exterior of a Unit may not be painted or altered by the Unit Owner.

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

(D) No Owner shall permit anything to be done or kept in an Owner's Unit or in the Common Elements or Limited Common Elements which will result in any increase of fire or hazard insurance premiums or the cancellation of insurance on any part of the Condominium Property, or which would be in violation of any law. No waste shall be committed to the Common Elements or Limited Common Elements.

(E) No sign of any kind shall be displayed to the public view on or from any part of the Condominium Property, without the prior written consent of the Board of Directors, except signs temporarily used by the Developer in the selling or leasing of the Units.

(F) No noxious or offensive activities shall be carried on, nor shall any outside lighting or sound speakers or other sound producing devices be used, nor shall anything be done, on any part of the Condominium Property which, in the judgment of the Board of Directors, may be or become an unreasonable annoyance or nuisance to the other Owners.

(G) No Owner shall cause or permit anything to be placed on the outside walls of an Owner's Unit, and no sign, awning, canopy, window air conditioning unit, shutter, or other fixture shall be affixed to or placed upon the exterior walls, balconies or roof of any building or any part thereof, without the prior written consent of the Board of Directors.

(H) No flags, clothes, sheets, blankets, towels, laundry of any kind or other articles shall be hung out or exposed on balconies, railings, furniture or on any part of the

Common Elements or Limited Common Elements. The Common Elements and Limited Common Elements shall be kept clear of rubbish, debris and other unsightly materials.

(I) No waterbed shall be placed or utilized in any Unit.

(J) No radio or television antenna or satellite dish shall be attached to or hung from the exterior of any Unit, except strictly in accordance with the Rules and Regulations.

(K) No one shall use or permit to be brought into any Unit or upon any of the Common Elements any flammable oils or fluids such as gasoline, kerosene, naphtha or benzene, or other explosives or articles deemed hazardous to life, limb or property, without the written consent of the Board of Directors.

(L) No Owner or occupant residing within a Unit may conduct any business, trade, garage sale, moving sale, rummage sale, or similar activity at or about the Condominium, whether within a Unit or otherwise, 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 and other legal requirements for the Condominium; (iii) the business activity does not involve door-to-door solicitation of residents of the Condominium; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Condominium which is noticeably greater than that which is typical of Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium, 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. Leasing or rental of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Developer with respect to its development and sale of the Condominium or its use of any Units which it owns within the Condominium, including the operation of model Units and/or a sales office and the operation of a rental or leasing program to which certain Units within the Condominium may be subject.

(M) No animal or pet shall be kept for commercial purposes, nor be allowed to create or cause any disturbance or nuisance of any kind as determined by the Board of Directors in the exercise of its sole discretion, and if an animal or pet does cause or create a nuisance or an unreasonable disturbance, said animal or pet shall be permanently

removed from the Condominium Property within seven (7) days from the date the Owner receives written notice from the Board of Directors to remove such animal or pet. The Owner of any pet or animal shall be liable for any and all damage caused by such animal or pet to any part of the Condominium Property. Notwithstanding the foregoing, no pot bellied pigs, venomous snakes, pit bull dogs, chows, rotweillers or doberman pinschers may be brought onto or kept on the Condominium Property at any time. In addition, other animals determined in the Board's sole discretion to be dangerous or a nuisance shall not be brought onto or kept on the Condominium Property at any time.

(N) No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected by any Owner, other than the Developer, on any portion of the Condominium Property, at any time, either temporarily or permanently, without the prior written approval of the Board.

(O) The display or discharge of firearms or fireworks on the Common Elements or the Limited Common Elements is prohibited; provided, however, that the display of lawful firearms on the Common Elements or the Limited Common Elements is permitted by security personnel and law enforcement officers and also is permitted for the limited purpose of transferring firearms across the Common Elements or Limited Common Elements to or from an Owner's Unit. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size.

(P) Unit Owners shall not remove, paint or change the appearance of the original, standard equipment, interior blinds placed in the Units by Developer except as necessary for routine repair or maintenance and, should replacement thereof be necessary, such blinds shall be replaced by the Unit Owner with blinds of the same size, quality, color and material as the original blinds. Use of (i) foil, bed sheets, flags and other similar unsightly non-traditional window treatment materials, and (ii) neon or flashing signs and advertising signs, on the inside of windows is strictly prohibited.

(Q) Unit Owners shall keep their hot water heater on and operational at all times regardless of whether said Unit Owner's Unit is occupied.

(R) Except with respect to the grills provided by the Association on the Common Elements, no charcoal or gas grills are allowed at the Condominium, and, more specifically, no grill of any kind is allowed in a Unit or a Limited Common Element.

(S) No colored light bulbs may be placed in any balcony/patio or other light fixture that is visible from the outside of any building containing a Unit.

8.03 Lease of Units. Entire Units may be leased by the Unit Owners; provided, however, that any such lease and the rights of any tenant thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable rules and regulations relating to the lease and rental of Units and to enforce the same directly against such tenant or other occupant by the exercise of such remedies as the Board deems appropriate; provided, however, that no restrictions shall be imposed which shall have the individual or cumulative effect of

prohibiting or materially impairing the rental or lease of Units. Further, all leases must be in writing, with a copy provided to the Association upon request by the Association. No lease shall be entered into for a period of less than five (5) months. These restrictions on use shall be a covenant running with each Unit, creating a burden on each single Unit and Unit Owner for the benefit of every other Unit and Unit Owner. Notwithstanding anything contained in this Section 8.03 to the contrary, each Owner shall be responsible for the actions of his tenants and nothing herein or in any such lease shall relieve an Owner of his obligations under the Condominium Documents. Each Unit Owner who has or who shall lease his Unit irrevocably empowers and authorizes the Association or its managing agent to enforce the Rules and Regulations and to terminate the lease of and evict any tenant who fails to comply with said rules or who provides other sufficient cause for termination of the lease and eviction in accordance with the laws of the State of Alabama, the Condominium Documents, or any contract for lease. The Association, the Board or its managing agent shall not become liable to any Unit Owner or sublessor or other party for any loss of rents or other damages resulting from the reasonable exercise of the provisions of this Section. The provisions of this Section shall not be applicable to the Developer who is irrevocably empowered without any limitation at all times, whether for permanent or temporary occupancy to sell, lease or rent Units for any period and under any terms to any lessees or purchasers or transferees with the right to take any action necessary to consummate the sale or rental of said Units, including, but not limited to, the right to maintain model Units, post signs, have employees in the offices maintained in the Condominium buildings, use the Common Elements and show Units to prospective tenants. Sales and rental office signs and all items pertaining to the rental or sale of Units shall not be considered Common Elements and shall remain the property of the Developer.

8.04 No Right to First Refusal. The right of a Unit Owner to sell, transfer, or otherwise convey his or her Unit shall not be subject to any right of first refusal or similar restriction in favor of Developer.

8.05 Right of Access. Each Unit Owner grants a right of access to such Owner's Unit to the Association, and to any other person authorized by the Association for the purpose of making inspections and for the purpose of correcting any condition originating in any Owner's 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 an Owner's 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 such Owner's Unit to the Developer and/or the Developer's agent for the purpose of making all repairs required by any warranty delivered to the Unit Owner at the closing of the sale of an Owner's 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 causes the same, shall be liable for the prompt repair thereof.

Article IX
Rights of Mortgagees

9.01 **Notification of Mortgagees Required.** Any Mortgagee who properly notifies the Association in accordance with the terms of Section 9.04 hereof 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, should in the opinion of the Board, be estimated to exceed Ten Thousand and No/100 Dollars (\$10,000.00); (c) damage to a Unit covered by the Mortgage if the amount of such damage exceeds Ten Thousand and No/100 Dollars (\$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.

9.02 **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 Mortgagee's request, a copy of the annual compiled statement, if any, within one hundred twenty (120) days following the end of any fiscal year of the Association.

9.03 **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 herein 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 this Declaration on the interest of the purchaser as an Owner after the date of such foreclosure sale to secure all assessments hereunder. After the date of such foreclosure sale, said lien, if any, shall be claimed and shall have the same effect and be enforced in the same manner provided herein. Notwithstanding the foregoing, the lien created pursuant to this Declaration is prior to any Mortgage to the extent of the Common Expense assessments based on the annual budget which would have become due in absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien.

(B) No provision of this Declaration, the Articles, the Bylaws or the Rules and Regulations shall be construed to grant to any Unit Owner, or to any other party any priority over any rights of the 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.

8.06 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 or problems resulting from the operation or lack of operation of sewer lines or any other utility 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 the 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 any reason, except by action taken by the Board of Directors in accordance with the Bylaws.

8.07 Abatement of Violations. The violation of any Rule or Regulation adopted by the Board of Directors or breach of the provisions of the Condominium Documents, shall give the 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 such defaulting Owner's additions and improvements thereto and a security interest under the Alabama Uniform Commercial Code upon all of such defaulting Owner's personal property in such defaulting Owner's 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.

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

(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.

9.04 Request for Protection by Mortgagees. Whenever any Mortgagee desires the benefit of the provisions of this Article to be applicable to such Mortgagee, the Mortgagee shall serve written notice of such fact upon the Association, by registered or certified mail, addressed to the Association, and actually mailed to the Association's address, 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 the Mortgagee. Said notice shall designate the place to which the notices are to be given by the Association to such Mortgagee.

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

Article X

Casualty Loss and Insurance

10.01 Responsibility of Owners; Separate Insurance Coverage.

(A) The Owner of each Unit shall be responsible for, at the Unit Owner's expense, obtaining insurance coverage for loss of or damage to the Owners' Unit, and all components thereof, or Limited Common Elements serving his Unit, any furniture, furnishings, decorations, personal effects, and other property belonging to such Owner, and shall, at the Unit Owner's 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 and held for the joint use and benefit of all Owners of Units shall be covered by such insurance as the same 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 the Owner's Unit, the value of which is in excess of Five Thousand and No/100 Dollars (\$5,000.00). 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 the 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 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.

10.02 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, location and use, insuring the Condominium Property against loss or damage by the perils of fire, lightning and those perils contained in extended coverage, vandalism and malicious mischief endorsements. If the Condominium Property is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards, the Board shall, to the extent obtainable, insure the insurable property included in the Condominium Property against the perils of flood under the National Flood Insurance Act of 1968 and acts amendatory thereto. The amount of insurance coverage shall be determined on a replacement cost basis in an amount not less than one hundred percent (100%) of the then current replacement cost of the improvements, including fixtures, equipment and other personal property of the Association (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 shall either (1) obtain an opinion from a qualified insurance appraiser, (2) obtain an appraisal from a qualified insurance appraiser, or (3) perform an analysis using an industry accepted valuation program (such as Marshall Swift), 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, appraisal or analysis shall be a Common Expense. All such policies of insurance shall comply with the provisions of this Article and shall (i) contain a standard mortgagee loss payable clause endorsement in favor of the Mortgagee or Mortgagees of each Unit, if any, as their respective interests may appear; and (ii) provide that the insurance shall not be invalidated by any act or neglect of any Owner.

(B) Public Liability and 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 Two Million Five Hundred Thousand Dollars (\$2,500,000), and in such form as shall be required by the Association to protect said Association and the Owners of all Units, which provide coverage for bodily injury and property damage resulting from the operation, maintenance or use of the Common Elements and Limited Common Elements and for legal liability resulting from employment contracts to which the Association is a party, and for claims against the officers and members of the Board of Directors for claims arising out of the negligent performance of their duties.

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

(D) Fidelity Bonds. The Association shall obtain and maintain fidelity bonds for any person who either handles or is responsible for funds held or administered by the Association naming the Association as the obligee. The amount of the fidelity bond shall cover the maximum funds that will be in the custody of the Association, but not less than the sum of three (3) months' Assessments on all Units plus the reserve funds of the Association, if any.

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

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

(A) All policies shall (i) comply with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association as they shall apply to condominium loans; and (ii) be written with a company licensed to do business in the State of Alabama and holding a financial rating

of "A-" or better by Best's Insurance Reports or other then comparable rating. To the extent that the provisions of this Declaration with respect to the maintenance of insurance shall conflict with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, then the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association shall control and such requirements shall be complied with by the Association.

(B) Exclusive authority to adjust all claims under the policies hereafter in force on the Condominium Property or otherwise required hereunder 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:

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

(2) 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, each Unit Owner, and the Mortgagee of each Unit to whom a certificate of insurance has been issued at such Mortgagee's last known address;

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

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

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

10.05 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 surplus of not less than Fifty Million Dollars (\$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 lower of two (2) bids from reputable contractors for making all repairs required by any such loss shall exceed One Hundred Thousand and No/100 Dollars (\$100,000.00), 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 a 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 the Unit Owner's 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 mortgagee clause endorsement to such policy shall, notwithstanding anything to the contrary therein or in any Mortgage contained, at all times be subject to the provisions hereof with respect to the application of insurance proceeds to reconstruction of the damaged Condominium Property; provided, 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 mortgagee 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.

10.06 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 by the Association 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 Unit Owner's 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 Unit Owner's 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 sufficient funds with the Insurance Trustee to completely pay for the repair, replacement or reconstruction of any loss or damage, as the case may be. The monies to be so paid, or deposited by the Association with the Insurance Trustee, may be paid by the Association out of its reserve or replacement fund and if the amount in such reserve or replacement fund is not sufficient, or if the Board of Directors determines not to use such fund for said purpose, then the Association shall levy and collect an assessment against the Owners of all Units in an amount which shall provide the funds required to pay for said repair, replacement or reconstruction.

10.07 Loss to All Elements. In the event of loss of or damage to Common Elements, Limited Common Elements and/or any portion 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 Units and the Limited Common Elements 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 this Article. If there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association or the Insurance Trustee, as the case may be, are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be sufficient, then the Board of Directors shall, based on reliable and detailed estimates obtained by it from competent and qualified parties, determine and allocate the cost of repair, replacement or reconstruction between the Common Elements, the Limited Common Elements and the Units sustaining any loss or damage. If the proceeds of said fire and casualty insurance, if any, are sufficient to pay for the repair, replacement or reconstruction of any loss of or damage to the Common Elements, but are not sufficient to repair, replace or reconstruct any loss of or damage to the Limited Common Elements or the Units sustaining damage, then the Association shall levy and collect an assessment from the respective Owners of the Units and/or the Owners to whom Limited Common Elements have been allocated which sustained any loss or damage, and the assessment so collected from said Owners shall be deposited with the Insurance Trustee, if any, so that the sum shall be on deposit for the repair, replacement or reconstruction of all Common Elements, Limited Common Elements, if any, and the Units. In said latter event, the assessment to be levied and collected from the Owner of each Unit sustaining loss or damage shall be apportioned between such Owners in such manner that the assessment levied against each Owner of a 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 Unit bears to the cost applicable to all of said Units sustaining loss or damage. If the fire and casualty insurance proceeds, if any, payable to the Association or the Insurance Trustee in the event of the loss of or damage to Common Elements, the Limited Common Elements and the Units 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 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 each Unit sustaining loss or damage shall then be levied and collected by assessment of the Owners of the Units sustaining the loss or damage in the same manner as is above provided for the apportionment of such assessment between Owners of Limited Common Elements and Units sustaining loss or damage.

10.08 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, if reasonably possible, 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 improved to the date of formation of the Condominium, or such other plans and specifications as may be approved by the Board of Directors, by all of the Owners of the damaged Units, and by not less than sixty percent (60%) of the Members including the Owners of damaged Units. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing the Unit Owners in any proceeding, negotiation, settlement, or agreement arising from any loss or damage to the Condominium Property. Such estimates are to contain and include the cost of any professional fees and premiums for such bonds as the Board of Directors may deem to be in the best interest of the membership of the 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. The Association shall give such Owners notice of such obligation as soon as the Association becomes aware of such obligation and such money shall be paid to the Association in accordance with the foregoing sentence 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 XI **Condemnation**

11.01 Condemnation 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 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 X. 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. In the event of failure to do so, at the discretion of the Board of

Directors, a special assessment shall be made against a defaulting Owner in the amount of such defaulting Owner's 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 herein, 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.

11.02 Partial Condemnation. In the event that the Condominium Property is not to be terminated in accordance with Article XII hereinbelow 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:

(1) The Unit shall be made tenantable.

(2) 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.

(3) 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 re-computing the shares of all Owners in the Common Elements and the Limited Common Elements as percentages of the total of their shares as reduced by the taking.

(4) 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:

(a) 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.

(b) The remaining portion of such Unit, if any, shall become a part of the Common Elements and shall be placed in condition for use by all of the Owners, in the manner approved by the Board of Directors; provided, 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 as provided herein.

(c) The shares in the Common Elements appurtenant to the Units which continue as a part of the Condominium Property shall be equitably adjusted to distribute the ownership to the Common Elements among the reduced number of Owners. This shall be done by re-computing 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.

(d) 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 effected by the taking. Such assessment shall be made in proportion to the share of such Owners in the Common Elements after the changes effected by the taking.

(B) If the market value of a Unit prior to the taking cannot be determined by agreement between the Owner, the Mortgagee and the Association within thirty (30) days after notice by any such party that an agreement cannot be reached, such value shall be determined by three (3) independent qualified appraisers with one (1) appraiser to be selected by the Association, one (1) appraiser to be selected by the Owner and Mortgagee, and the third (3rd) appraiser to be selected by the two (2) appraisers so appointed, and the fair market value of the Unit shall be deemed to be the average of the two (2) 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 effected by the taking.

(C) Changes in the Units, in the Common Elements and/or Limited Common Elements, in the ownership of the Common Elements and/or Limited Common Elements and in the shares of liability for Common Expenses and/or Limited Common Expenses which are effected by eminent domain, shall be evidenced by an amendment of this Declaration which is approved by the Board of Directors in accordance with this Declaration and the Association's Bylaws.

11.03 Association Appointed as Attorney-In-Fact for Unit Owners. The Association is hereby appointed as attorney-in-fact, coupled with an interest, 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 XII
Termination

12.01 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:

(1) two-thirds (2/3) or more of the Units in the Condominium Property shall have been destroyed or substantially damaged by fire, wind, water, or other natural causes, or a combination of such, (including condemnation); or

(2) the Condominium Property has been in existence in excess of fifty (50) years after the date of this Declaration shall have been executed 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 to consider and vote upon whether to restore, repair and/or rebuild the Condominium Property, and if not, whether to terminate this Declaration and remove the Condominium Property from the provisions of the Act. If approved by the affirmative vote of at least eighty percent (80%) of the Owners of all Units (based upon one vote for each Unit) and by at least eighty percent (80%) of all Mortgagees (based upon one vote for each Mortgage owned) after notice given as provided herein, this Declaration and plan of condominium ownership established herein shall be subject to termination as provided in the Act and the Association shall be authorized to file on behalf of and in the name of the Unit Owners and shall file a petition for such termination and removal with the Circuit Court of Lee County, Alabama. If less than eighty percent (80%) of the Owners of all Units and/or less than eighty percent (80%) 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 these provisions.

(B) In the event that the Circuit Court of Lee County, Alabama, 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 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 Units to which Limited Common Elements have been allocated in this Declaration shall own each such Limited Common Element appurtenant to each Owner's Unit, and the lien of any Mortgage or other encumbrance upon such Units shall attach to the Limited Common Elements of each respective owner's Unit. Upon termination of

this Declaration and the plan of condominium ownership established herein, the Owners of all Units still habitable shall within sixty (60) days from the date of the granting of the petition, deliver possession of their respective Units to the Association. Upon such delivery of possession, the Owners of habitable 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 proceeds 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 such Owner's then undivided interest in the Land and remaining improvements as therein 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 Unit Owner's Mortgagee, as their respective interest may appear, in the same manner as is above provided for the distribution of any final insurance proceeds.

12.02 Termination By Consent. Except in the event this Declaration and the plan of condominium ownership established hereby is terminated as provided above, this Declaration may only be otherwise terminated by the consent of eighty percent (80%) of the Owners of all Units and all parties holding Mortgages, liens or other encumbrances, against any of said Units, in which event the termination of the Condominium Property shall be by such plans as may be then unanimously adopted by said Owners and parties holding any Mortgages, liens or other encumbrances so voting to terminate. 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 in accordance with the Act, and such instruments shall be recorded in the Real Property Records.

Article XIII General Provisions

13.01 Covenant Against Partition. There shall be no judicial or other partition of the Condominium Property or any part thereof, nor shall any person acquiring any interest in the Condominium Property or any part thereof seek any such partition unless the Condominium Property has been removed from the provisions of the Act.

13.02 Unit Keys. At the request of the Association, each Unit Owner, by acceptance of a deed to a Unit, agrees to provide the Association with a key to the Unit (and the security alarm code, if any) to be used by the Association for maintenance, emergency, security or safety purposes. Neither the Developer nor the Association shall be liable for any loss or damage due to it holding such key, or use of such key for the purposes described above and each Unit Owner shall indemnify and hold harmless the Developer, the Association and its officers and directors

against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon the Developer, the Association or its officers and directors in connection with any action, suit or other proceeding (including settlement of any such action, suit or proceeding) brought by the Unit Owner or the Unit Owner's family, tenants, guests, employees, invitees, lessees or licensees against the Developer, the Association, or its officers or directors arising out of or relating to its holding or use of such key for the purposes described above.

13.03 Disclosures. Each Owner and each Owner's family, tenants, guests, employees, invitees, lessees or licensees acknowledge the following:

(A) The Condominium is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

(B) The views from an Owner's Unit may change over time due to, among other circumstances, additional development and the removal or addition of landscaping.

(C) No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.

(D) No representations are made regarding the schools that currently or may in the future serve the Unit.

(E) Since in every neighborhood, there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of the Condominium Property that an Owner may find objectionable and that it shall be the sole responsibility of the Owners to become acquainted with neighborhood conditions that could affect the Unit.

(F) No representations are made that the Unit is or will be soundproof or that sound may not be transmitted from one Unit to another.

(G) The floor plans and the dimensions and square footage calculations shown on the Plans, if any, are only approximations. Any Unit Owner who is concerned about any representations regarding the Plans should perform his own investigation as to the dimensions, measurements and square footage of his Unit.

(H) The Developer will be constructing portions of the Condominium and engaging in other construction activities related to the construction of Common Elements, the Limited Common Elements and improvement of Units as well as the potential construction and development of Phase II and/or Phase III. Such construction activities may, from time to time, produce certain conditions on the Condominium, including, without limitation: (1) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (2) smoke; (3) noxious, toxic, or corrosive fumes or gases; (4) obnoxious odors; (5) dust, dirt or flying ash; (6) unusual fire or explosion hazards; (7) temporary interruption of utilities; and/or (8) other conditions that may

Article XIV
Amendment

14.01 Amendments by Developer. Without limiting the rights of the Developer to alter the Condominium as described hereinabove in this Declaration, 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 Articles of Incorporation and the Bylaws until such time as Developer relinquishes control of the Association as provided below.

(B) The Developer reserves the right to amend this Declaration and the Condominium Documents so long as there is no Unit Owner other than the Developer.

(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 such changes or amendments requested by a Mortgagee shall not materially affect the rights of the Unit Owners or the value of the Unit or the undivided interest in the Common Elements or Limited Common Elements, if any, attributable to each Unit Owner.

(D) The Developer reserves the right at any time to amend this Declaration without the consent of the Owners to cause Phase II to be made a part of the Condominium in accordance with Section 4.05 hereof.

(E) The Developer reserves the right at any time to amend this Declaration without the consent of the Owners to cause Phase III to be made a part of the Condominium in accordance with Section 4.06 hereof.

(F) The Developer reserves the right at any time to amend this Declaration without the consent of the Owners to cause Phase IV to be made a part of the Condominium in accordance with Section 4.07 hereof.

14.02 Amendments by Unit Owners. At such time as there is a Unit Owner other than the Developer, then this Declaration may be amended in the following manner:

(A) A proposal to amend this Declaration may be considered at any meeting of the Members called for that purpose in accordance with the provisions of the Bylaws; provided that the Association provides prior written notice of such meeting to the Mortgagees as provided above.

threaten the security or safety of persons on the Condominium Property. Notwithstanding the foregoing, all Owners agree that such conditions on the Condominium Property resulting from renovation and construction activities shall not be deemed a nuisance and shall not cause the Developer and its agents to be deemed in violation of any provision of this Declaration.

(I) Exposed concrete surfaces in portions of the Condominium which are not heated and cooled are subject to cracking, due to water penetration, expansion and contraction of the concrete with temperature changes, building settlement or other reasons.

(J) Concrete surfaces in heated and cooled portions of the Condominium are subject to cracking due to building settlement or other reasons.

(K) A Unit may trap humidity created by every day living (cooking, bathing, laundering etc.). As a result, condensation may appear on the interior portion of windows and glass surfaces and fogging of windows and glass surfaces may occur due to temperature disparities between the interior and exterior portions of the windows and glass. If left unattended and not properly maintained by Owners, the condensation may increase resulting in staining, damage to surrounding seals, caulk, paint, wood work and sheetrock, and potentially, mildew and/or mold.

(L) Mold and/or mildew can grow in any portion of the Condominium that is exposed to elevated levels of moisture. The Association and each Unit Owner agree to: (1) regularly inspect the parts of the Condominium that they respectively maintain, and which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew, and/or water intrusion and/or damage; (2) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Condominium that they respectively maintain; (3) remediate or replace any building material located in the parts of the Condominium that they respectively maintain that has absorbed water or moisture as a result of water intrusion; and (4) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Condominium that they respectively maintain in accordance with current industry-accepted methods. In addition, each Unit Owner agrees to notify the Association of the discovery of mold, mildew, and/or water intrusion and/or damage in their respective Units.

(M) The Condominium Property is situated in a location that may be subject to tornados, hurricanes, tropical storms, strong winds, erosion, flooding and other forces of nature that may cause damage or casualty losses to the Condominium Property.

(1) The proposal to amend this 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 and by the affirmative vote of the Mortgagees representing not less than sixty-seven percent (67%) of the total allocated votes of the Units subject to the Mortgages; or

(2) In the event the proposed amendment seeks to amend a voting requirement that requires greater than sixty-seven percent (67%) approval for the action contemplated by such provision (the "Approval Requirement"), then the amendment of such provision must be approved by the affirmative vote of not less than the relevant Approval Requirement of the total allocated votes of the Association and the affirmative vote of the Mortgagees representing not less than the relevant Approval Requirement of the total allocated votes of the Units subject to the Mortgages; or

(B) By unanimous consent or agreement of the Unit Owners and the Mortgagees as evidenced by their signatures to the amendment.

14.03 Prohibited Amendments. Notwithstanding the foregoing Section 14.02, no amendment to this Declaration made pursuant to Section 14.02 shall:

(A) change a Unit, including the ownership in Common Elements and 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

(B) eliminate, modify, change, impair, abridge, prejudice or otherwise adversely affect any rights, benefits, privileges or priorities granted to the Developer without the written consent of the Developer.

14.04 Effectiveness of Amendments. A copy of each amendment so adopted shall be certified by the President or Vice President and Secretary or Assistant Secretary of the Association as having been fully adopted, and shall be effective when recorded in the Real Property Records.

Article XV **Control of the Association**

15.01 Election of Board of Directors. The Developer, its successors or assigns, may appoint and remove the members of the Board of Directors, and in the event of vacancies, the Developer shall fill the vacancies, until no later than the earlier of either (i) sixty (60) days after seventy-five percent (75%) of the total number of Units have been conveyed to purchasers of Units, or (ii) two (2) years have elapsed from the date the Developer has ceased to offer Units for sale in the ordinary course of business, or (iii) the Developer elects by written notice to the Association, at the Developer's option, to terminate such control of the Association, whichever

first occurs. Notwithstanding the foregoing, within ninety (90) days after conveyance by Developer of twenty-five percent (25%) of the Units, the Unit Owners other than Developer shall be entitled to elect twenty-five percent (25%) of the members of the Board of Directors. No later than ninety (90) days after conveyance of fifty percent (50%) of the Units to Unit Owners other than Developer, not less than thirty-three and one-third (33 1/3%) percent of the members of the Board shall be elected by the Unit Owners. The Developer shall be entitled to elect at least one (1) member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Units, and such right is not contrary to the other provisions hereof.

15.02 Notice of Meeting. Within sixty (60) days before the date of termination of control of the Association by the Developer, 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 the members of the Board of Directors. Such meeting shall be called and the notice given in accordance with the Bylaws.

15.03 Status of Unsold Units.

(A) The Developer shall be deemed to be the Owner of each Unit which has not been conveyed to a person other than 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 Mortgage lien against any Unit which has not been conveyed to a person other than the 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 above, no assessments shall be imposed by the Association against the Developer as the Owner of unsold Units until sixty (60) days after the conveyance of the first Unit by the Developer. 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 any unsold Units.

15.04 Professional Management and Other Contracts. Any agreement entered into by the Association prior to the passage of control of the Association from the Developer that is subject to the provisions of § 35-8A-305 of the Act shall be terminable in accordance with said § 35-8A-305.

Article XVI
Dispute Resolution

16.01 Agreement to Encourage Resolution of Disputes Without Litigation.

(A) Developer, the Association and its officers, directors, and committee members, all Owners, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Party"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Condominium, the Association and/or the Owners without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim (hereinafter defined), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 16.02 in a good faith effort to resolve such Claim.

(B) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to:

- (1) the interpretation, application, or enforcement of the Condominium Documents;
- (2) the rights, obligations and duties of any Bound Party under the Condominium Documents; or
- (3) the design or construction of improvements within the Condominium;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 16.02:

- (i) any suit by the Association to collect Assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;
- (iii) any suit between Owners, which does not include Developer or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Condominium Documents;
- (iv) any suit in which any indispensable party is not a Bound Party;

(v) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 16.02(A), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article; and

(vi) any suit relating to or arising out of any Alleged Defect (hereinafter defined).

16.02 Dispute Resolution Procedures.

(A) **Notice.** The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(B) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(C) **Mediation.** If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice described in Section 16.02(A) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency or individual providing dispute resolution services in the State of Alabama. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each party shall bear its

own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

(D) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

16.03 Initiation of Litigation by Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial, arbitration or administrative proceedings unless first approved by a vote of the Members entitled to cast seventy-five percent (75%) of the votes in the Association, except that no such approval shall be required for actions or proceedings:

- (A) initiated during the period that the Developer controls the Association;
- (B) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (C) initiated to challenge property taxation or condemnation proceedings;
- (D) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (E) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section 16.03 shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

16.04 Developer's Right to Cure Alleged Defects. Due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the Developer's responsibility therefor. It is the Developer's intent to resolve all disputes and claims regarding any Alleged Defect (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the Association and all Unit Owners shall be bound by the following claim resolution procedure with respect to Alleged Defects:

- (A) Developer's Right to Cure. In the event that the Association, Board or any Unit Owner or Unit Owners (a "Complaining Party") claim, contend or allege that any portion of the Condominium, including, without limitation, the Common Elements, the

Limited Common Elements, any Unit, and/or any improvements constructed on the Condominium Property, are defective or that the Developer or its agents, consultants, contractors or subcontractors (collectively, the "Developer's Agents") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively an "Alleged Defect"), the Developer hereby reserves the right to inspect, repair and/or replace such Alleged Defect as set forth herein.

(B) Notice to Developer. In the event that a Complaining Party discovers any Alleged Defect, such Complaining Party shall, within a reasonable time after discovery, notify the Developer, in writing, at such address as the Developer may from time to time provide to the Association, or such other address at which the Developer maintains its principal place of business, of the specific nature of such Alleged Defect ("Notice of Alleged Defect").

(C) Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by the Developer of a Notice of Alleged Defect or the independent discovery of any Alleged Defect by the Developer, the Developer shall have the right, upon reasonable notice to the Complaining Party and during normal business hours, to enter onto or into, as applicable, the Common Elements, the Limited Common Elements, any Unit, and/or any improvements or other portion of the Condominium Property for the purposes of inspecting and, if deemed necessary by the Developer, repairing and/or replacing such Alleged Defect. In conducting such inspection, repairs and/or replacement, the Developer shall be entitled to take any actions as it shall deem reasonable and necessary under the circumstances.

(D) Legal Actions. No Complaining Party shall initiate any legal action, cause of action, proceeding, or arbitration against the Developer alleging damages (1) for the costs of repairing or the replacement of any Alleged Defect, (2) for the diminution in value of any real or personal property resulting from such Alleged Defect, or (3) for any consequential damages resulting from such Alleged Defect, unless and until the Complaining Party has (i) delivered to the Developer a Notice of Alleged Defect and (ii) the Developer has, within ninety (90) days after its receipt of such Notice of Alleged Defect, either (a) failed to repair or replace such Alleged Defect or (b) if such Alleged Defect cannot reasonably be repaired or replaced within such ninety (90) day period, failed to commence such repair or replacement of the Alleged Defect and, thereafter, failed to pursue diligently such repair or replacement to completion.

(E) No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this Paragraph 16.04 shall be construed to impose any obligation on the Developer to inspect, repair, or replace or pay for any item or Alleged Defect for which the Developer is not otherwise obligated to do under applicable law or other agreement to which the Developer is a party. The right of the Developer to enter, inspect, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the Developer in the Real Property Records. This provision does not create any warranties, express or implied, on the part of the Developer or the Association.

federal, state or local law or ordinance, decree, order, judgment or otherwise, the reminder shall be unaffected thereby.

17.06 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 in accordance with Alabama law. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

17.07 Notice. All notices required or desired under this Declaration or the Condominium Documents to be sent to the Association shall be sent certified mail, return receipt requested, by hand delivery or by a recognized overnight courier who maintains verification of delivery, to the Secretary of the Association at such address as the Association may designate from time to time by notice in writing to all Unit Owners. Except as specifically provided to the contrary in the Act, all notices to any Unit Owner shall be delivered by hand delivery, by a recognized overnight courier who maintains verification of delivery in person, or by first (1st) class mail to the address of such Unit Owner at the Condominium, or to such other address as he may have designated from time to time, in a writing duly received, to the Association.

17.08 Governing Law. This Declaration shall be governed by, and is to be construed according to, the laws of the State of Alabama.

17.09 Conflict Between Documents. If there is any conflict or inconsistency between the terms and conditions of this Declaration and the terms and conditions of the Articles, the Bylaws or the Rules, the terms and conditions of this Declaration shall control. If there is any conflict or inconsistency between the terms and conditions of the Articles and the terms and conditions of the Bylaws or the Rules, the terms and conditions of the Articles shall control. If there is any conflict or inconsistency between the terms and conditions of the Bylaws and the terms and conditions of the Rules, the terms and conditions of the Bylaws shall control.

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(F) **Arbitration.** Any disagreement between an Owner, Owners, the Board, and/or the Association, on the one hand, and the Developer on the other, concerning Developer's efforts to remedy or repair any Alleged Defect (a "Dispute"), after compliance with the foregoing provisions of this Section 16.04, shall be resolved by binding arbitration conducted in Lee County, Alabama in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. At the option of the Developer, any other person or entity with whom or which the Developer has an agreement for binding arbitration may be joined in an arbitration proceeding hereunder. The award rendered by the arbitrators shall be final and binding upon the parties to the arbitration, and judgment upon the award may be entered in any court having jurisdiction over any of the parties thereto. Arbitration proceedings pertaining to a Dispute shall be transcribed verbatim by a competent court reporting company selected by the American Arbitration Association. The initial fee of the American Arbitration Association shall be borne by the party initiating the Dispute, and all other costs of the arbitration, including the costs and fees of the arbitrators, and the expense of transcription, shall be borne in equal shares by (a) the Owner or Owners and/or Association, (b) Developer, and (c) any other parties to the arbitration joined at Owner's option. Notwithstanding anything herein to the contrary, the respective parties to the arbitration shall each be responsible for their own costs incurred in the arbitration with respect to third party expenses, including but not limited to, costs of discovery, attorneys' fees, accountants' fees, investigation expenses, and experts' fees.

Article XVII **Miscellaneous**

17.01 **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.

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

17.03 **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.

17.04 **Exhibits.** The Exhibits attached to this Declaration are an integral part of this Declaration.

17.05 **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

IN WITNESS WHEREOF, the Developer has caused these presents to be executed, by and through its duly authorized representative, as of the 22 day of June, 2007.

RETREAT OF AUBURN, L.L.C., an Alabama
limited liability company

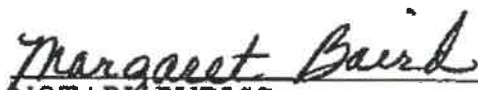
By: 
John E. Vawter
As Its President

STATE OF ALABAMA
COUNTY OF JEFFERSON

I, the undersigned notary public in and for said state and county, hereby certify that John E. Vawter, whose name as President of Retreat of Auburn, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this 22 day of June, 2007.




NOTARY PUBLIC
My Commission Expires COMMISSION EXPIRES JULY 20, 2007

CONSENT OF MORTGAGEE

Wachovia Bank, National Association, a national banking association ("Mortgagee"), the mortgagee under that certain Mortgage, Assignment of Rents and Leases and Security Agreement from Developer to Mortgagee dated August 1, 2006, and recorded in Mortgage Book 3359, Page 356 in the Office of the Judge of Probate of Lee County, Alabama, as amended by that certain Amendment to Mortgage by and between Developer and Mortgagee dated April 10, 2007, and recorded in Mortgage Book 3438, Page 801 in the Office of the Judge of Probate of Lee County, Alabama and that certain UCC-1 Financing Statement from Developer to Mortgagee recorded in UCC Book 19, Page 807 in the Office of the Judge of Probate of Lee County, Alabama (collectively, the "Mortgage"), does hereby consent to the recording of this Declaration. Furthermore, Mortgagee does hereby subordinate in all respects its interest in and to the Land to this Declaration. Mortgagee does hereby acknowledge and agree that this Declaration shall be unaffected by any default, foreclosure or exercise of any other remedy under the Mortgage, the same as if this Declaration were executed, delivered and recorded prior to the execution and recording of the Mortgage.

IN WITNESS WHEREOF, Mortgagee has caused this Consent to be executed by and through its duly authorized representative as of the 21st day of June, 2007.

WACHOVIA BANK, NATIONAL
ASSOCIATION, a national banking association

By: [Signature]

Name: MARK BRINTON
As Its: VICE PRESIDENT

STATE OF ALABAMA
COUNTY OF Jefferson

I, the undersigned notary public in and for said state and county, hereby certify that Mark Brinton, whose name as Vice President of Wachovia Bank, National Association, a national banking association, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said national banking association.

Given under my hand and official seal this 21st day of June, 2007.

[Signature]
NOTARY PUBLIC
My Commission Expires: May 9, 2010

EXHIBIT "A"
TO
DECLARATION OF CONDOMINIUM
OF
CREEKSIDE OF AUBURN CONDOMINIUMS

LEGAL DESCRIPTION OF THE LAND

Those certain parcels of real property located in Lee County, Alabama and more particularly described as follows:

PARCEL A:

Parcel 4 according to and as shown on a map or plat of D.F.C. Subdivision No. 1, First Revision, made by David H. Miller, an Alabama Registered Land Surveyor, Certificate No. 6259, on April 12, 1966, and revised on December 14, 1966, and redated on February 2, 1973, a copy of said plat is recorded in Town Plat Book 7, at page 69 in the Office of the Judge of Probate of Lee County, Alabama.

PARCEL B:

Parcel 3-A of a resubdivision of Parcels 2 and 3 of D.F.C. Subdivision No. 1, First Revision, Auburn, Lee County, Alabama as recorded in Plat Book 10, at Page 183, in the Office of the Judge of Probate of Lee County, Alabama.

LESS AND EXCEPT the following described real property:

Lot 10, Temple Street Subdivision, First Addition, according to and as shown by map or plat of said subdivision of record in Plat Book 23, at Page 97, in the Office of the Judge of Probate of Lee County, Alabama.

Said property is also more particularly described as follows:

A description of a parcel of land lying in Section 20, Township 19 North, Range 26 East, Auburn, Lee County, Alabama. Commence at the locally accepted

Southwest corner of Section 20; thence North $65^{\circ} 01'33''$ East a distance of 1173.10'; thence North $07^{\circ} 19'49''$ West a distance of 110.05'; thence North $84^{\circ} 39'47''$ East a distance of 172.57'; thence North $62^{\circ} 14'11''$ East, a distance of 24.21' to a found three-quarter inch open top iron pin (Fuller) and the Point of Beginning of the parcel herein described; thence from said POINT OF BEGINNING run North $08^{\circ} 40'30''$ West, a distance of 412.53' to a found three-quarter inch open top iron pin; thence South $81^{\circ} 19'11''$ West, a distance of 209.95' to a found three quarter inch open top iron pin (Fuller); thence North $08^{\circ} 34'43''$ West, a distance of 889.01' to a found half inch open top iron pin; thence North $08^{\circ} 57'55''$ West, a distance of 716.20' to a found three-quarter inch open top pin; thence South $89^{\circ} 26'53''$ East, a distance of 585.73' to a found three-quarter inch open top pin (Fuller); thence South $89^{\circ} 26'36''$ East, a distance of 814.92' to a set half inch rebar (R.D. Robertson) in the westerly line of Dekalb Street (right of way varies) and the cusp of a curve concave to the east, said curve having a radius of 50 feet and a central angle of $106^{\circ} 08'48''$ and being subtended by a chord that bears South $00^{\circ} 09'44''$ West, 79.94 feet; thence along the westerly line of said street and curve a distance of 92.63 feet to a set half inch rebar; thence along said street South $00^{\circ} 09'44''$ West a distance of 1002.76 feet to a set half inch rebar (R.D. Robertson); thence along said street South $01^{\circ} 33'27''$ East, a distance of 402.21 feet to a found three-quarter inch open top iron pin; thence leaving said street run South $62^{\circ} 10'51''$ West a distance of 236.19 feet to a half inch open top iron pin; thence North $17^{\circ} 57'14''$ West a distance of 6.11 feet to a found three quarter inch open top iron pin; thence South $62^{\circ} 14'11''$ West a distance of 296.86 feet to a found half inch open top iron pin; thence South $62^{\circ} 14'11''$ West a distance of 475.79 feet to the Point of Beginning, said area containing 49.36 acres, more or less.

EXHIBIT "B"
TO
DECLARATION OF CONDOMINIUM
OF
CREEKSIDE OF AUBURN CONDOMINIUMS

BY-LAWS
OF
CREEKSIDE OF AUBURN CONDOMINIUM ASSOCIATION, INC.

ARTICLE I
THE ASSOCIATION

Section 1. Identity. These are the By-Laws of Creekside of Auburn Condominium Association, Inc., a not for profit corporation (the "Association"), which was formed under the Alabama Nonprofit Corporation Act (Code of Alabama 1975 §§ 10-3A-1 et seq.) (the "Nonprofit Act") by filing the Articles of Incorporation of the Creekside of Auburn Condominium Association, Inc. (the "Articles"), with the Office of the Judge of Probate of Lee County, Alabama. The Association has been organized for the purpose of providing for the acquisition, operation, management, maintenance, care, control and administration of the properties of Creekside of Auburn Condominiums (the "Condominium"), pursuant to the provisions of the Alabama Uniform Condominium Act of 1991 (Code of Alabama §§ 35-8A-101 et seq.) (the "Condominium Act") and the Declaration of Condominium of Creekside of Auburn Condominiums (the "Declaration"), as filed with the Office of the Judge of Probate of Lee County, Alabama, in accordance with the provisions of the Condominium Act. The terms capitalized herein shall be deemed to have the meanings set forth in the Declaration and the Condominium Act.

Section 2. Principal Office. The principal office of the Association in the State of Alabama shall be located in the City of Auburn, County of Lee. The Association may have such other offices, either within or without the State of Alabama, as the Board of Directors may designate or as the business of the Association may require from time to time.

Section 3. Registered Office. The registered office of the Association, required by the Nonprofit Act to be maintained in the State of Alabama, may be, but need not be, identical to the principal office in the State of Alabama, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE II MEMBERSHIP

Section 1. Annual Meeting. The annual meeting of the Membership shall be held on the first Saturday in the month of November in each year, beginning with the year 2006 at the hour of 10:00 a.m., or at such other time on such other day within such month as shall be fixed by the Board of Directors, for the purpose of electing directors, if the period of exclusive Developer control of the election of Members of the Board of Directors has ended, and in any event, for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting shall be a legal holiday in the State of Alabama, such meeting shall be held on the next succeeding business day. If the election of directors shall not be held on the day designated herein for any annual meeting of the Membership, or at any adjournment thereof, the Board of Directors shall cause the election to be held at a special meeting of the Membership as soon thereafter as may be convenient.

Section 2. Special Meetings. Special meetings of the Membership, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or by a majority of the Board of Directors and shall be called by the President or the Secretary at the request of holders of not less than twenty (20%) percent of all the outstanding votes of the Membership.

Section 3. Place of Meeting. The Board of Directors may designate any place, within or without the State of Alabama, as the place of meeting for any annual meeting or for any special meeting of the Membership. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be the principal office of the Association in the State of Alabama.

Section 4. Notice of Meeting. Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, or of a meeting which is required by statute to be held for any special purpose, or of an annual meeting at which special action is to be taken, the purpose or purposes for which the meeting is called, or the special action which is proposed to be taken, shall, unless otherwise prescribed by statute, be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the President, the Secretary, or the persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the member at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 5. Fixing of Record Date. The Board of Directors may fix in advance a date as the record date for the purpose of determining the members entitled to notice of or to vote at

without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit.

Section 11. Informal Action by Members. Any action required to be taken at a meeting of the Membership, or any other action which may be taken at a meeting of the Membership, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof.

ARTICLE III BOARD OF DIRECTORS

Section 1. General Powers. The affairs of the Association shall be managed by or under the direction of its Board of Directors.

Section 2. Number, Tenure and Qualifications. The initial Board of Directors shall consist of three (3) directors. These By-Laws may be amended from time to time as provided for herein to increase or decrease the number of directors of the Association to not less than three (3) nor more than five (5) directors. Each director shall hold office until the next annual meeting of the members and until his successor shall have been duly elected and shall have qualified or until his death or until he shall have resigned or shall have been removed, as provided for herein. A director need not be a member of the Association.

Section 3. Election of Directors.

(a) **General Election Procedure.** Election of directors entitled to be elected by the members shall be held at the annual meeting, or, if required in accordance with sub-paragraph (b) below, at a special meeting of the Membership. The election shall be by secret ballot (unless dispensed with by unanimous consent) and by a plurality of the votes cast. The Owner of each whole Unit shall be entitled to cast his votes for each of as many nominees as there are vacancies to be filled at the time of the election. There shall be no cumulative voting.

(b) **Developer Control.** Notwithstanding the provisions of sub-paragraph (a) above, or anything in these By-Laws to the contrary, the Developer (as defined in the Declaration), its successors and assigns, and not the members of the Association, shall have the exclusive right to control the Association by electing all of the members of the Board of Directors of the Association, and in the event of vacancies, the Developer shall fill such vacancies, until such time as either (i) the expiration of sixty (60) days following the conveyance of seventy-five percent (75%) of the Units in the Condominium to purchasers of Units other than Developer, or (ii) the expiration of two (2) years from the date the Developer has ceased to offer Units for sale in the ordinary course of business, or (iii) the Developer elects by written notice to the Association, at its option, to terminate such control of the Association, whichever first occurs; provided, however, and in limitation of the foregoing, no later than ninety (90) days after conveyance of twenty-five percent (25%) of the Units, members of the Association, other than the Developer, shall be entitled to elect twenty-five percent (25%) of the members of the Board

any meeting of members or any adjournment thereof, or for any other proper purpose, such date in any case to be not more than thirty (30) days and, in case of a meeting of the Membership, not less than ten (10) days prior to the date on which the particular action requiring such determination of members is to be taken. If no record date is fixed for the determination of members entitled to notice of or to vote at a meeting of the Membership, the date on which notice of the meeting is mailed shall be the record date for such determination of members. When a determination has been made, as provided in this section, such determination shall apply to any adjournment thereof.

Section 6. Voting Lists. The officer or agent having charge of the records of members of the Association shall make, at least ten (10) days before each meeting of the Membership, a complete list of the members entitled to vote at such meeting, or any adjournment thereof, arranged in alphabetical order, with the address of each member and the number of votes to which he is entitled, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the principal office of the Association and shall be subject to inspection by any member making written request therefor at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any member during the whole time of the meeting

Section 7. Quorum. The presence at any meeting of the members entitled to cast twenty (20%) percent of the votes in the Association, represented in person or by proxy, shall constitute a quorum. If a quorum is not present at any meeting, a majority of the members so represented may adjourn the meeting and reconvene from time to time without further notice. At any such reconvened meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified. The members present or represented at a meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

Section 8. Majority Vote. The vote of members entitled to cast a majority of the votes represented at a meeting of the Membership at which a quorum is present shall be the act of the members of the Association, unless the vote of a greater number is required by law, the Declaration, the Articles, or these By-Laws.

Section 9. Proxies. At all meetings of the Membership, a member may vote in person or by proxy executed in writing by the member or by his duly authorized attorney in fact. A proxy is void if it is not dated or purports to be revocable without notice. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after one (1) year from the date of its execution, unless a shorter term is provided in the proxy.

Section 10. Voting Rights. If only one of the multiple Owners of a Unit is present at a meeting of the Association, he is entitled to cast all the votes allocated to that Unit. If more than one of the multiple Owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. There is a majority agreement if any one of the multiple Owners casts the votes allocated to that Unit

and not later than ninety (90) days after conveyance of fifty percent (50%) of the Units to Unit Owners other than Developer, not less than thirty-three and one-third percent (33 1/3%) of the members of the Board shall be elected by the members of the Association other than the Developer. The Developer shall be entitled to elect at least one member of the Board of Directors as long as the Developer holds for sale in the ordinary course of business at least five percent (5%) of the Units in the Condominium and such right is not violative of the then provisions of the Condominium Act. Within sixty (60) days before the date of termination of control of the Association by the Developer, the Board of Directors shall call and give not less than ten (10) nor more than thirty (30) days notice of a special meeting of the Membership for the purpose of electing the members of the Board of Directors.

Section 4. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this By-Law immediately after, and at the same place as, the annual meeting of the Membership; provided, however, any such regular meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings, or in a consent and waiver of notice thereof, signed by all directors. The Board of Directors may provide, by resolution, the time and place, within or without the State of Alabama, for the holding of additional regular meetings without other notice than such resolution.

Section 5. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the President or any two (2) directors.

Section 6. Notice. Notice of any special meeting shall be given at least three (3) days prior thereto by written notice delivered personally or mailed to each director at his business address, by U.S. mail or private carrier. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by private carrier, such notice shall be deemed to be delivered when the notice is delivered to the private carrier. Any director may waive notice of any meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

Section 7. Quorum. A majority of the number of directors determined in the manner fixed by Section 2 of this Article III shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice. If a quorum is present when the meeting is convened, the directors present may continue to do business, taking action by a vote of the majority of a quorum, until adjournment, notwithstanding the withdrawal of enough directors to leave less than a quorum present, or the refusal of any director present to vote.

Section 8. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

President, the Vice Presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Any Vice President shall perform such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 7. Secretary. The Secretary shall: (a) keep the minutes of the proceedings of the Members and of the Board of Directors in one or more books provided for the purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws or as required by law; (c) be custodian of the corporate records and of the seal of the Association and see that the seal of the Association is affixed to all documents the execution of which on behalf of the Association under its seal is duly authorized; (d) keep a register of the mailing address of each member which shall be furnished to the Secretary by such member; (e) have general charge of the transfer books of the members of the Association; and (f) in general perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him by the President or by the Board of Directors.

Section 8. Treasurer. The Treasurer shall: (a) have charge and custody of and be responsible for all funds and securities of the Association; (b) receive and give receipts for monies due and payable to the Association from any source whatsoever, and deposit all such monies in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Article V of these By-Laws; and (c) in general perform all of the duties as from time to time may be assigned to him by the President or by the Board of Directors. If required by the Board of Directors, the Treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the Board of Directors shall determine.

Section 9. Assistant Secretaries and Assistant Treasurer. The Assistant Secretaries and Assistant Treasurers, in general, shall be assigned to them by the Secretary or the Treasurer, respectively, or by the President or the Board of Directors. The Assistant Treasurers shall respectively, if required by the Board of Directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine.

Section 10. Salaries. The salaries of the officers, if any, shall be fixed from time to time by the Board of Directors, and no officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the Association.

ARTICLE V CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the Board of Directors may select.

Section 5. Proxies. Unless otherwise provided by resolution of the Board of Directors, the President may from time to time appoint an attorney or agent of the Association, in the name and on behalf of the Association, to cast the votes which the Association may be entitled to cast as the holder of stock or other securities in any other corporation any of whose stock or other securities may be held by the Association, at meetings of the holders of the stock or other securities of such other corporation, or to consent in writing, in the name and on behalf of the Association, as such holder, to any action by such other corporation, and may instruct the person or persons so appointed as to the manner of casting such votes or giving such consent, and may execute or cause to be executed, in the name and on behalf of the Association and under its corporate seal or otherwise, all such written proxies or other instruments as he may deem necessary or proper in the premises.

ARTICLE VI BOOKS AND RECORDS

Section 1. Accounting. The Association shall keep correct and complete books and records of account and shall keep minutes of the proceedings of the members, Board of Directors and committees thereof and shall keep at its registered or principal office in Alabama a record of the names and addresses of the members entitled to vote for directors and officers. The accounting records shall be maintained in accordance with generally accepted accounting principles. All books and records of the Association shall be open to inspection by the members or their authorized representatives for any proper purpose at any reasonable time in Lee County, Alabama. Such records shall include:

(a) **Association Accounts.** The receipts and expenditures of the Association shall be credited and charged to the appropriate account as set forth below.

(i) **Current Expenses.** All funds to be expended during the year for the maintenance of the Common Elements and Limited Common Elements (as defined in the Declaration) and the operation and working capital of the Association shall be held in the Current Expense Account. Any balance in this fund at the end of each year may be used to pay

Common Expenses and Limited Expenses incurred in any successive year or may be placed in the Reserve Fund Account.

(ii) **Reserve Funds.** All funds to be expended for replacement, acquisition and repair of capital improvements which are a part of Common Elements and Limited Common Elements shall be held in the Reserve Fund Account.

(b) **Member Accounts.** An account for each member shall be maintained setting forth the name and address of the member, the interest percentage in the Common Elements and Limited Common Elements, if any, the amount of each assessment, the amounts and dates on which the assessments become due, the amounts paid upon the account and the balance due.

Section 2. Budget. At least ninety (90) days prior to the beginning of each calendar year, the Board of Directors shall adopt a proposed budget for each calendar year that shall include the estimated funds required to defray the Common Expenses and Limited Common Expenses and to provide and maintain funds for the foregoing accounts and reserves according to good accounting practices. Within thirty (30) days of adoption of the proposed budget, copies of the budget and proposed assessments shall be transmitted to each member of the Association and a date set for a meeting of the Unit Owners to consider ratification of the budget, not less than fourteen (14) days nor more than thirty (30) days after delivery of the budget to the Unit Owners. Unless, at the meeting, a majority of all 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 budget for the last year shall continue in effect until such time a new budget is ratified.

Section 3. Assessments. Subject to the terms and conditions of the Declaration, assessments against the members for their shares of the items of the budget shall be made for the calendar year annually in advance on or before December 31, preceding the year for which the assessments are made. Such assessments shall be due in quarterly or monthly installments, as may be determined by the Board of Directors. In the event the annual assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors. Such assessments shall constitute a lien as provided for in the Declaration.

Section 4. Assessments for Emergencies. Subject to the terms and conditions of the Declaration, assessments for Common Expenses for emergencies that cannot be paid from the annual assessments for Common Expenses shall be made only after notice of the need for such is given to the members concerned, and it shall be due thirty (30) days after such notice in such manner as the Board of Directors may require in the notice of assessment. Such assessments shall constitute a lien as provided for in the Declaration.

Section 5. Audit or Compilation. An audit or compilation of the accounts of the Association shall be made annually by a certified public accountant, and a copy of the audit report shall be made available for examination by each member in Lee County, Alabama.

Section 6. Bonds. Fidelity bonds shall be required by the Board of Directors from all persons handling or responsible for Association funds. The amount of such bonds shall be determined by the Board of Directors, but not less than the sum of three (3) months' assessments on all Units for Common Expenses and Limited Common Expenses plus the reserve funds of the Association, if any. The premiums of such bonds shall be paid by the Association.

Section 7. Rules & Regulations and Violation of any Documents. Subject to the terms and conditions of the Declaration, the Board of Directors may establish, abolish or amend reasonable rules and regulations concerning the use of the Common Elements. The text of such rules and regulations shall be furnished or made available to the members. The Board shall have the power, upon violation of the rules and regulations, or upon violation of the terms of the Declaration or these By-Laws to impose monetary fines on a member which shall constitute a lien and shall be enforceable in like manner as provided for assessments or to suspend for a reasonable period of time either the member's right to the use of common facilities within the Common Elements or the member's right to vote.

ARTICLE VII WAIVER OF NOTICE

Whenever any notice is required to be given to any member or director of the Association under the provisions of these By-Laws, the Articles of Incorporation, the Declaration, the provisions of the Nonprofit Act, and any act amendatory thereof, supplementary thereto or substituted therefor, the provisions of the Condominium Act, and any act amendatory thereof, supplemental thereto or substituted therefor, or the Alabama Constitution, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

ARTICLE VIII FISCAL YEAR

The fiscal year of the Association shall be fixed by resolution of the Board of Directors.

ARTICLE IX INDEMNIFICATION

The Association shall have the right to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, by reason of the fact that he is or was a director, officer, employee or agent of the Association. The indemnification provided for herein shall not be deemed exclusive of and shall be in addition to any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall

continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE X AMENDMENT

Section 1. Amendment to By-Laws. These By-Laws may be amended, altered or repealed in the following manner:

(a) **By the Board.** By the Board of Directors for such period of time as the Developer has the right to elect at least a majority of the members of the Board of Directors of the Association in accordance with Section 3(b) of Article III hereof; and thereafter,

(b) **By the Members.** By the members at any regular or special meeting upon the affirmative vote of the holders of not less than sixty-seven percent (67%) of the outstanding votes present and entitled to vote at such meeting in person or represented by proxy, at which a quorum is present.

Section 2. Recordation. No modification or amendment to these By-Laws shall be valid and effective until the President and Secretary of the Association shall certify as to the adoption of such amendment and shall file their certificate setting forth the text of the amendment with the Office of the Judge of Probate of Lee County, Alabama.

EXHIBIT "D"
TO
DECLARATION OF CONDOMINIUM
OF
CREEKSIDE OF AUBURN CONDOMINIUMS

**UNIT OWNER'S OWNERSHIP INTERESTS IN COMMON ELEMENTS AND
LIMITED COMMON ELEMENTS**

The following is the current approximation for ownership interests in the Common Elements and Limited Common Elements for each Unit based on current construction drawings. At this time, these figures are approximate only and are subject to change. These figures will be finalized upon substantial completion of the Units and the recording of this Declaration.

<u>Condominium Unit Number</u>	<u>Ownership Interest in Common Elements and Limited Common Elements</u>
1031, 1064, 1065, and 1066.	0.43933%
2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208, 3209, 3210, 3211, 3212, 3213, 3214, 3215, 3216, 3217, 3218, 3219, 3220, 3221, 3222, 3223, and 3224.	0.49135%
2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, and 3112.	0.55235%
1017, 1022, 1039, 1041, 1047, 1052, 1054, 1056, and 1061.	0.59822%
1026, 1027, 1028, 1029, 1067, 1068, 1069, and 1070.	0.64882%

EXHIBIT "C"
TO
DECLARATION OF CONDOMINIUM
OF
CREEKSIDE OF AUBURN CONDOMINIUMS

PLAN AND PLAT

Attached are "shrunk down" copies of the Plat and Plan for the Condominium. Full-sized copies of the Plat are also recorded at Plat Book 3, Page 190 in the records of the Office of the Judge of Probate of Lee County, Alabama.

<u>Condominium Unit Number</u>	<u>Ownership Interest in Common Elements and Limited Common Elements</u>
1018, 1023, 1038, 1040, 1046, 1051, 1053, 1055, and 1060.	0.71314%
1035, 1037, 1043, 1044, 1045, 1048, 1049, 1050, 1057, 1058, 1059, 1062, and 1063.	0.71692%
1001, 1002, 1005, 1006, 1009, 1010, 1013, 1014, 1101, 1102, 1105, 1106, 1109, 1110, 1113, and 1114.	0.74246%
1003, 1004, 1007, 1008, 1011, 1012, 1015, 1016, 1103, 1104, 1107, 1108, 1111, 1112, 1115, and 1116.	0.85595%
1019, 1020, 1021, 1024, 1025, 1030, 1032, 1033, 1034, 1036, and 1042.	0.86494%

STATE OF ALABAMA
COUNTY OF LEE

THIRD AMENDMENT

TO

DECLARATION OF CONDOMINIUM

OF

CREEKSIDE OF AUBURN CONDOMINIUMS

8004 873
Recorded in the Above
CONDO Book & Page
04-24-2008 01:28:54 PM
Bill English - Probate Judge
Lee County, AL
Book/Pg: 8004/873
Term/Cashier: SCAN3 / K5
Tran: 3042.59938.81895
Recorded: 04-24-2008 13:29:07
REC Recording Fee
Total Fees: \$ 83.00

83.00

THIS THIRD AMENDMENT TO DECLARATION OF CONDOMINIUM OF CREEKSIDE OF AUBURN CONDOMINIUMS (this "Amendment") is made this 24 day of April, 2008, by Retreat of Auburn, L.L.C., an Alabama limited liability company (the "Developer"), pursuant to the provisions of the Act and Sections 4.05, 4.06, 14.01(D) and 14.01(E) of the Declaration (hereinafter defined).

1. Submission of Portion of Phase II. In accordance with Sections 4.05 and 14.01(D) of that certain Declaration of Condominium of Creekside of Auburn Condominiums, which was recorded in Condo Book 8003, Page 150 in the Real Property Records (the "Original Declaration"), as amended by that certain First Amendment to Declaration of Condominium of Creekside of Auburn Condominiums, which was recorded in Condo Book 8003, Page 708 in the Real Property Records (the "First Amendment"), as amended by that certain Second Amendment to Declaration of Condominium of Creekside of Auburn Condominiums, which was recorded in Condo Book 8004, Page 1 (the "Second Amendment") (the Original Declaration as amended by the First Amendment and the Second Amendment is sometimes hereinafter collectively referred to as the "Declaration"), the Developer hereby submits to the Condominium that certain portion of Phase II more particularly depicted on Exhibit "1" attached hereto and labeled as "Phase VII" ("Phase 7"). Upon recording this Amendment in the Real Property Records, Phase 7 shall thereafter form and be a part of the Condominium in accordance with the Act, the same as if Phase 7 had been submitted to the condominium form of ownership pursuant to the Declaration, and the ownership and use of Phase 7 shall be subject to the terms and conditions of the Declaration, as amended hereby.

2. Submission of Portion of Phase II. In accordance with Sections 4.05 and 14.01(D) of the Declaration, the Developer hereby submits to the Condominium that certain portion of Phase II more particularly depicted on Exhibit "1" attached hereto as "Phase VI" ("Phase 6"). Upon recording this Amendment in the Real Property Records, Phase 6 shall thereafter form and be a part of the Condominium in accordance with the Act, the same as if Phase 6 had been submitted to the condominium form of ownership pursuant to the Declaration,

and the ownership and use of Phase 6 shall be subject to the terms and conditions of the Declaration, as amended hereby.

3. Submission of Phase IV. In accordance with Sections 4.07 and 14.01(F) of the Declaration, the Developer hereby submits to the Condominium Phase IV as more particularly depicted on Exhibit "1" attached hereto ("Phase 4"). Upon recording this Amendment in the Real Property Records, Phase 4 shall thereafter form and be a part of the Condominium in accordance with the Act, the same as if Phase 4 had been submitted to the condominium form of ownership pursuant to the Declaration, and the ownership and use of Phase 4 shall be subject to the terms and conditions of the Declaration, as amended hereby. All of the improvements constructed and added to the Condominium as a part of Phase 4 are and shall be Common Elements, which improvements include, but are not limited to, a clubhouse and swimming pool.

4. Total Number of New Units. By virtue of this Amendment, the Developer is adding thirty-six (36) Units to the Condominium.

5. Addition to Plat and Plan. The Plat and Plan attached as Exhibit "C" to the Declaration is hereby amended and supplemented by adding thereto the additional plans and plat attached hereto as Exhibit "1" and incorporated herein by reference, which (a) shows the location of each Unit in Phase 6 and Phase 7, (b) shows the location of the Common Element improvements constructed as part of Phase IV, and (c) sets forth the unit number for each Unit added to the Condominium pursuant to the terms and conditions hereof. The term "Plat and Plan" as used in the Declaration shall mean the Plat and Plan attached as Exhibit "C" to the Declaration and as amended and supplemented pursuant to this Section.

6. Ownership Interests in Common Elements. Exhibit "D" to the Declaration is hereby amended by deleting the current Exhibit "D" to the Declaration in its entirety and replacing it with the terms set forth on Exhibit "2" attached hereto.

7. Capitalized Terms. Capitalized terms used herein unless otherwise defined herein shall have the meaning ascribed to such terms in the Declaration.

8. Continued Effectiveness. All of the applicable terms, conditions and provisions of the Declaration, as hereby amended, are in all respects hereby ratified and reaffirmed, and the Declaration and this Amendment shall be read, taken and construed as one and the same instrument. References in the Declaration and all exhibits thereto shall be deemed to be references to the Declaration as amended by this Amendment.

[Remainder of Page Intentionally Left Blank]

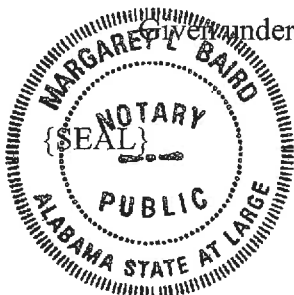
IN WITNESS WHEREOF, the Developer has caused these presents to be executed, by and through its duly authorized representative, as of the day and year first above written.

RETREAT OF AUBURN, L.L.C., an Alabama
limited liability company

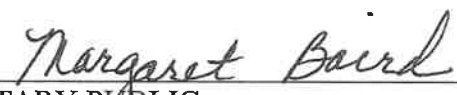
By: 
John E. Vawter
As Its President

STATE OF ALABAMA
COUNTY OF Jefferson

I, the undersigned notary public in and for said state and county, hereby certify that John E. Vawter, whose name as President of Retreat of Auburn, L.L.C., an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability company on the day the same bears date.



Under my hand and official seal this 1 day of April, 2008.


NOTARY PUBLIC
My Commission Expires: NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: July 20, 2011
BONDED THRU NOTARY PUBLIC UNDERWRITERS

This Instrument Prepared By:
Christopher M. Gill, Esq.
Hand Arendall, L.L.C.
Post Office Box 123
Mobile, Alabama 36601
251-432-5511
727007_2

CONSENT OF MORTGAGEE

Wachovia Bank, National Association, a national banking association ("Mortgagee"), the mortgagee under that certain Mortgage, Assignment of Rents and Leases and Security Agreement from Developer to Mortgagee dated August 1, 2006, and recorded in Mortgage Book 3359, Page 356 in the Office of the Judge of Probate of Lee County, Alabama, as amended by that certain Amendment to Mortgage by and between Developer and Mortgagee dated April 10, 2007, and recorded in Mortgage Book 3438, Page 801 in the Office of the Judge of Probate of Lee County, Alabama and that certain UCC-1 Financing Statement from Developer to Mortgagee recorded in UCC Book 19, Page 807 in the Office of the Judge of Probate of Lee County, Alabama (collectively, the "Mortgage"), does hereby consent to the recording of this Amendment. Furthermore, Mortgagee does hereby subordinate in all respects its interest in and to the Units created hereby to the Declaration as amended by this Amendment. Mortgagee does hereby acknowledge and agree that the Declaration as amended by this Amendment shall be unaffected by any default, foreclosure or exercise of any other remedy under the Mortgage, the same as if this Amendment were executed, delivered and recorded prior to the execution and recording of the Mortgage.

IN WITNESS WHEREOF, Mortgagee has caused this Consent to be executed by and through its duly authorized representative as of the 8th day of April, 2008.

**WACHOVIA BANK, NATIONAL
ASSOCIATION**, a national banking association

By: Marko Matic
Name: MARKO MATIC
As Its: AVP

STATE OF ALABAMA
COUNTY OF Jefferson

I, the undersigned notary public in and for said state and county, hereby certify that Marko Matic, whose name as A.V.P. of Wachovia Bank, National Association, a national banking association, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said national banking association.

Given under my hand and official seal this 8th day of April, 2008.



Margaret Cristoforo
NOTARY PUBLIC
My Commission Expires: May 9, 2010

EXHIBIT "1"
TO
THIRD AMENDMENT
TO
DECLARATION OF CONDOMINIUM
OF
CREEKSIDE OF AUBURN CONDOMINIUMS

SUPPLEMENTAL PLAT AND PLANS

Attached are copies of the Plans for the Units that constitute Phase 6 and Phase 7. The Plat for Phase 6 and Phase 7 is recorded in Plat Book 4, Page 34 of the records of the Office of the Judge of Probate of Lee County, Alabama.

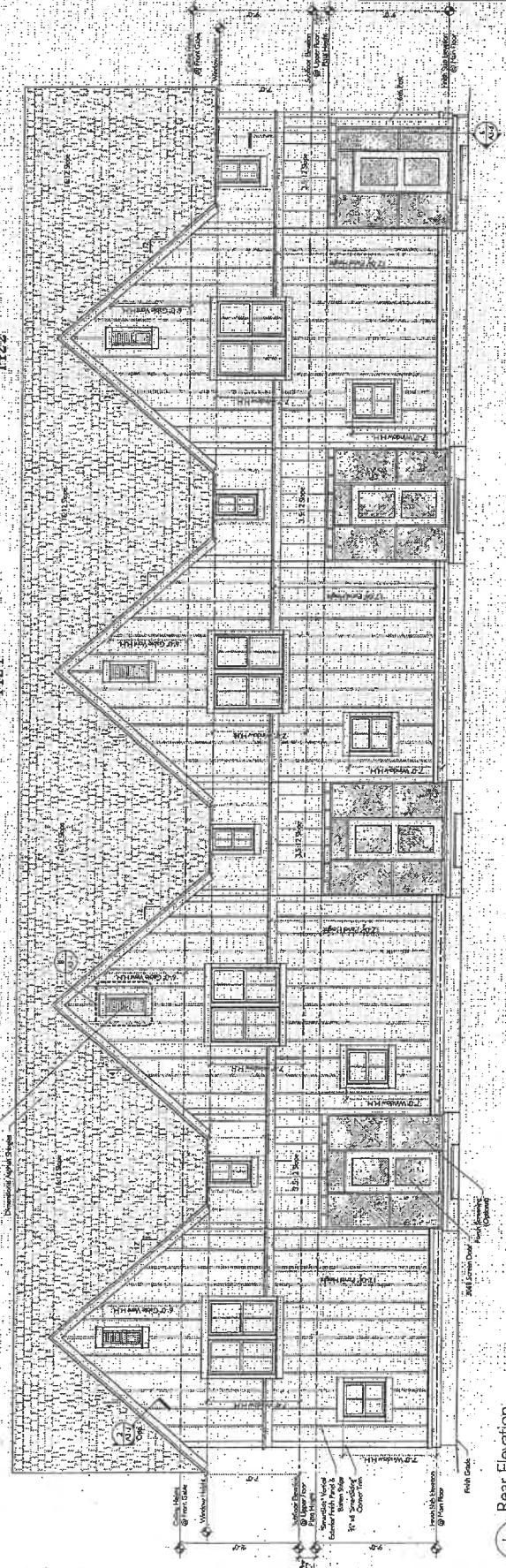
ARCHITECT'S CERTIFICATION OF PLANS
OF
CREEKSIDE OF AUBURN CONDOMINIUMS
(PHASES 6 and 7)

Architect's Certification

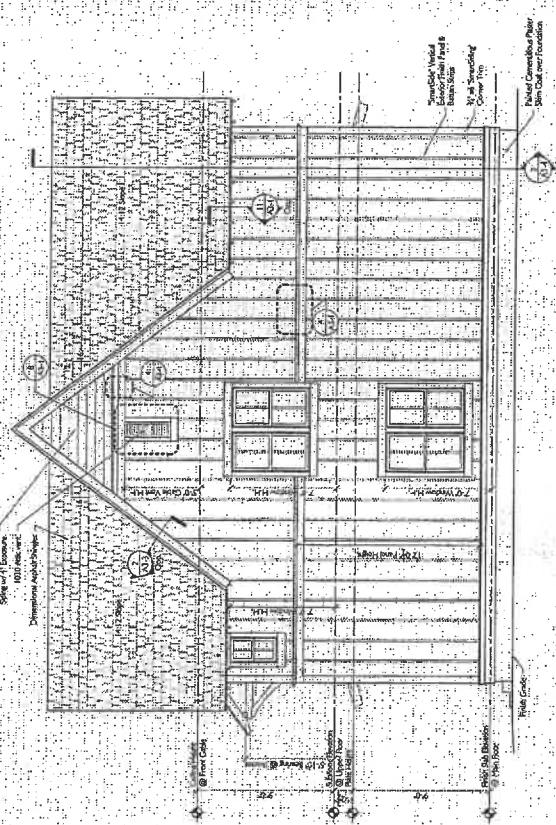
The undersigned, Louis Nequette, a Registered Architect in the State of Alabama (Registration Number 4494), hereby certifies that to the best of his knowledge and belief, and within the limited scope of Construction Observation Services performed, (a) all structural components and mechanical systems of all Units show on the plans to which this certification is affixed, consisting of SEVENTEEN (17) pages (the "Plans"), as described in the Declaration of Condominium, as amended by the First Amendment to the Declaration of Condominium, the Second Amendment to Declaration, and the Third Amendment to the Declaration of Condominium (collectively, the "Declaration"), are substantially complete in accordance with the Plans, (b) each of the Units as described in the Declaration and shown on the Plans are substantially complete, and (c) the Plans contain all information required by § 35-8A-209 of the Alabama Code (1975) relating to condominium unit plans.


Print Name: Louis Nequette

1428 1426 1424 1422



1 Rear Elevation
A2-2 Scale 1/8" = 1'-0"



2 Right Elevation
A2-2 Scale 1/8" = 1'-0"

BOOK 580
CONDO Book & Page

DUNCAN NEQUETTE ARCHITECTS
2315 Second Avenue South
Birmingham, Alabama 35211
t 205 332 6155
f 205 332 6167
www.duncannequette.com



ISSUED FOR CONSTRUCTION
CREEKSIDE of AUBURN
Townhouse
E-2, Bureput

ARCHITECT: DUNCAN NEQUETTE
DESIGNED BY: DUNCAN NEQUETTE
CHECKED BY: DUNCAN NEQUETTE
DATE: 10/1/11

SHEET INDEX	DESCRIPTION
A2-1	Site Plan
A2-2	Foundation Plan
A2-3	First Floor Plan
A2-4	Second Floor Plan
A2-5	Roof Plan
A2-6	Section Elevation
A2-7	Section Elevation
A2-8	Section Elevation
A2-9	Section Elevation
A2-10	Section Elevation
A2-11	Section Elevation
A2-12	Section Elevation
A2-13	Section Elevation
A2-14	Section Elevation
A2-15	Section Elevation
A2-16	Section Elevation
A2-17	Section Elevation
A2-18	Section Elevation
A2-19	Section Elevation
A2-20	Section Elevation
A2-21	Section Elevation
A2-22	Section Elevation
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A2-24	Section Elevation
A2-25	Section Elevation
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A2-45	Section Elevation
A2-46	Section Elevation
A2-47	Section Elevation
A2-48	Section Elevation
A2-49	Section Elevation
A2-50	Section Elevation

REVISIONS

1.0000 11/1/11

0' 1' 2' 3' 4' 5' 6' 7' 8' 9' 10' 11' 12'
Graphic Scale
1/8" = 1'-0"

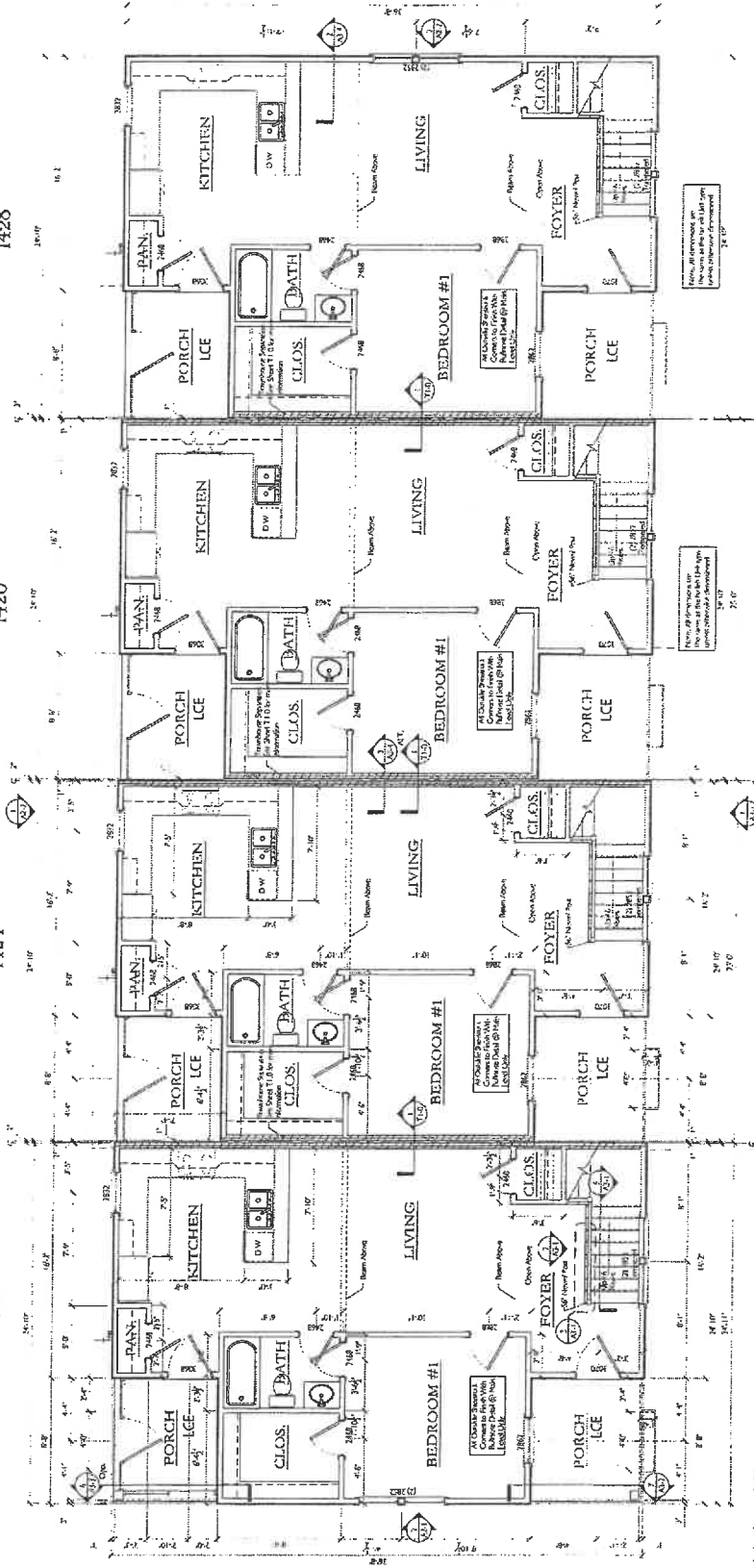
A2-2

1422

1424

1426

1428



1 Main Level Plan

Scale 1/8" = 1'-0"



Graphic Scale

REVISIONS

Main Level Plan

A1-3

**DUNGAN
NEQUETTE**
ARCHITECTS
2832 Second Avenue South
Suite 210
Mobile, AL 36688
Tel: 251.322.6445
Fax: 251.322.6447
dungannequette.com



**ISSUE FOR
CONSTRUCTION**
**CREKESIDE
OF AUBURN**
Townhouse
E - 2 Bottomnut

PROJECT: A1-3
DATE: 08/07/07
DRAWN BY: SBR
CHECKED BY: LN
DATE: 08/07/07

SHEET INDEX
A1-1 Foundation Plan
A1-2 First Floor Plan
A1-3 Main Level Plan
A1-4 Upper Level Plan
A1-5 Lower Level Plan
A1-6 Section Elevation
A1-7 Section Elevation
A1-8 Section Elevation
A1-9 Section Elevation
A1-10 Section Elevation
A1-11 Section Elevation
A1-12 Section Elevation
A1-13 Section Elevation
A1-14 Section Elevation
A1-15 Section Elevation
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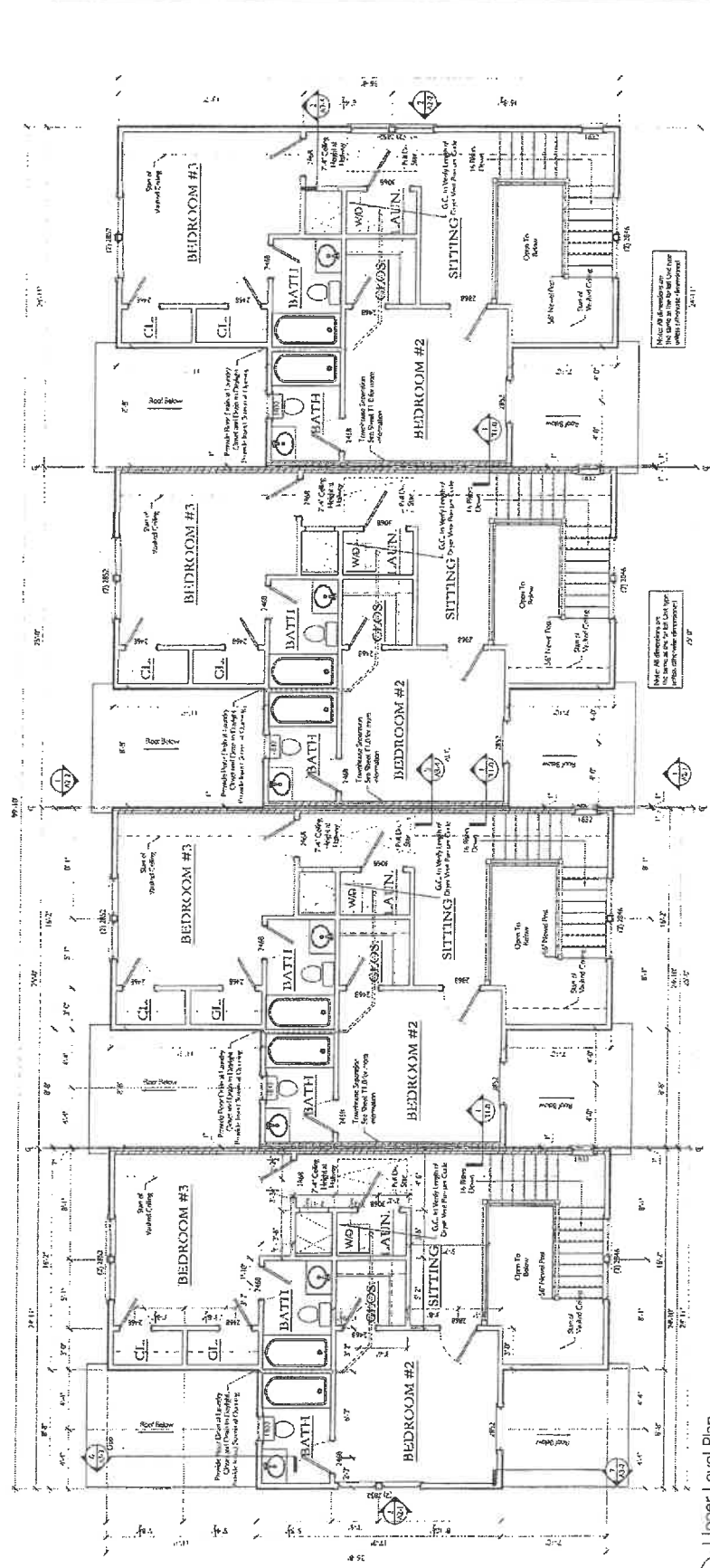
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ISSUE FOR
CONSTRUCTION
CREKESIDE
of AUBURN
Townhouse
E - 2 Butternut

ALBANY, ALABAMA
REVISION 002 2/10/2012

Drawn by
Checked by
Date

SHEET INDEX	
A1.1	Foundation Plan
A1.2	Roof Plan
A1.3	First Floor Plan
A1.4	Second Floor Plan
A1.5	Upper Level Plan
A2.1	Front Elevation
A2.2	Side Elevation
A2.3	Back Elevation
A2.4	Side Elevation
A2.5	Back Elevation
A2.6	Side Elevation
A2.7	Back Elevation
A2.8	Side Elevation
A2.9	Back Elevation
A2.10	Side Elevation
A2.11	Back Elevation
A2.12	Side Elevation
A2.13	Back Elevation
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REVISIONS

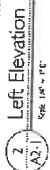
Upper Level Floor Plan

A1-4



1 Upper Level Plan
A1-4 Scale: 1/4" = 1'-0"

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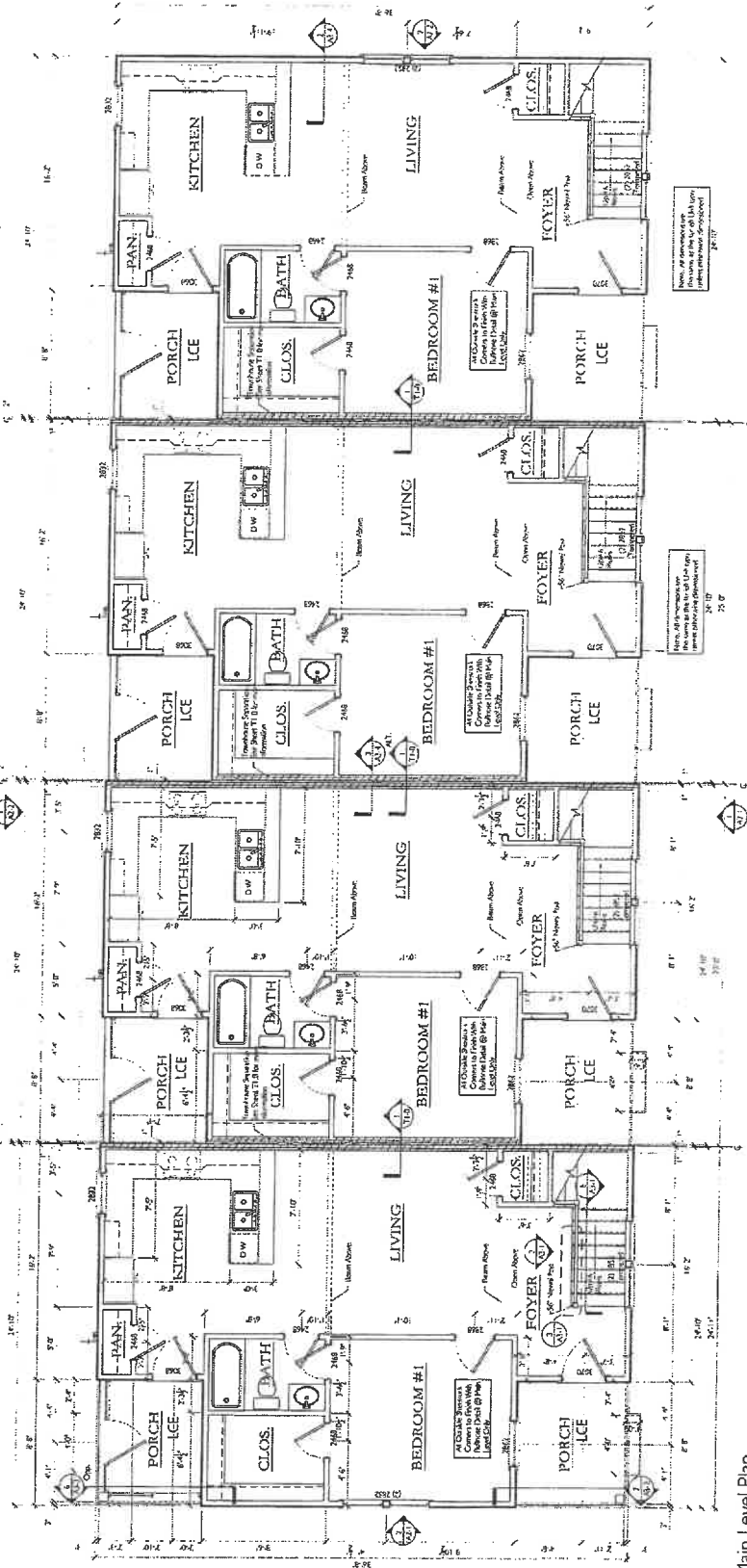
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CONDO Book & Page

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1 Main Level Plan

Scale: 1/4" = 1'-0"



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**ISSUE FOR
CONSTRUCTION**
**CREKESIDE
of AUBURN**
Townhouse
E - 2 Butternut

DESIGNED BY: D.N.A. 2/14/12
DRAWN BY: M. J. 2/14/12
CHECKED BY: S.P. 2/14/12

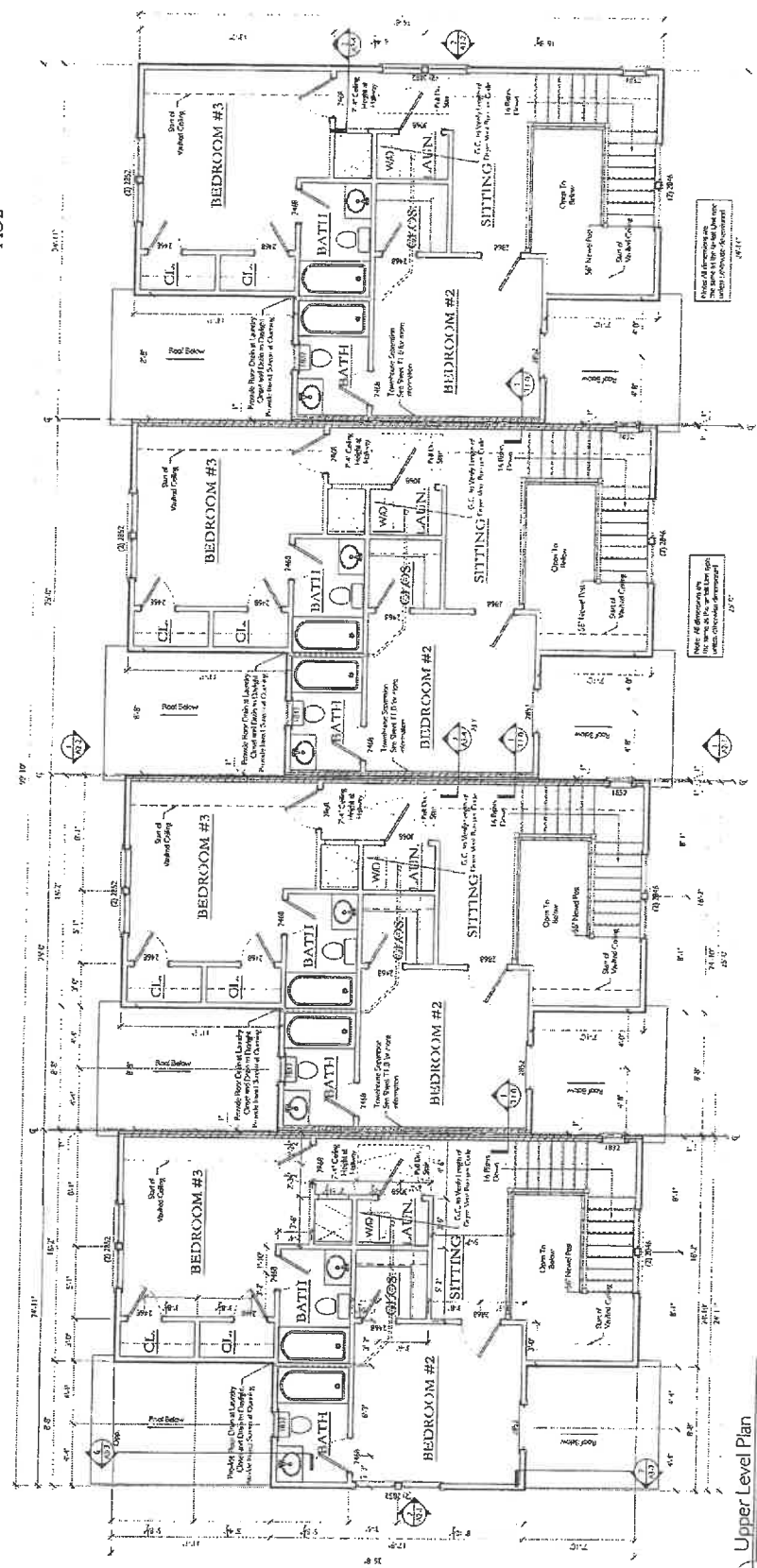
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	1. Title Sheet	
	2. Foundation Plan	
	3. 1st Floor Plan	
	4. 2nd Floor Plan	
	5. 3rd Floor Plan	
	6. 4th Floor Plan	
	7. 5th Floor Plan	
	8. 6th Floor Plan	
	9. 7th Floor Plan	
	10. 8th Floor Plan	
	11. 9th Floor Plan	
	12. 10th Floor Plan	
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	15. 13th Floor Plan	
	16. 14th Floor Plan	
	17. 15th Floor Plan	
	18. 16th Floor Plan	
	19. 17th Floor Plan	
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	23. 21st Floor Plan	
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	40. 38th Floor Plan	
	41. 39th Floor Plan	
	42. 40th Floor Plan	
	43. 41st Floor Plan	
	44. 42nd Floor Plan	
	45. 43rd Floor Plan	
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	50. 48th Floor Plan	
	51. 49th Floor Plan	
	52. 50th Floor Plan	

1429

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1431

1432



1 Upper Level Plan

Scale: 1/4" = 1'-0"



REVISIONS

Upper Level 14307 Plan

A1-4

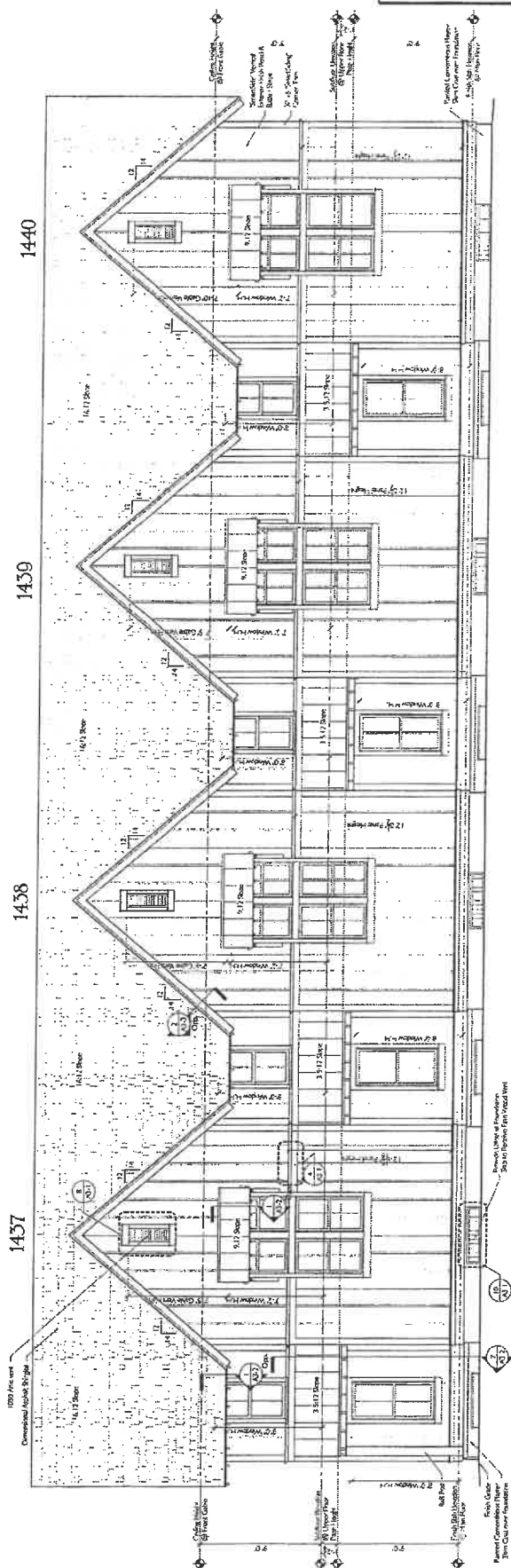
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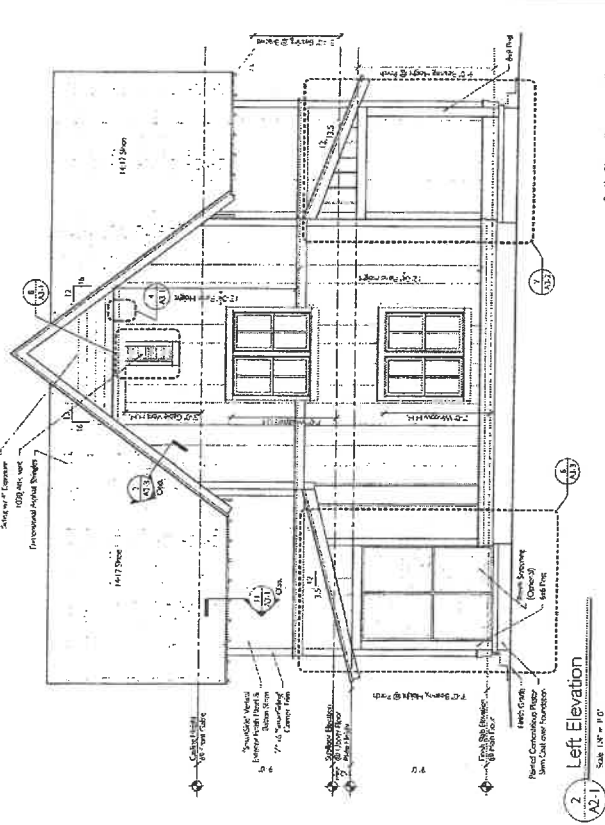
ISSUE FOR
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CREEKSIDE
of AUBURN
Townhouse
E - 2 Butternut

ARCHITECT: DUNGAN NEQUETTE
DATE: 05/01/2019
DRAWN BY: J. DUNGAN
CHECKED BY: J. DUNGAN
IN: J. DUNGAN

- SCHEDULE**
- 1.11 Site Plan
 - 1.12 Foundation Plan
 - 1.13 AC Roof Plan
 - 1.14 Main Level Plan
 - 1.15 Second Level Plan
 - 1.16 Exterior Elevation
 - 1.17 AC Interior Elevation
 - 1.18 Building Section Details
 - 1.19 Building Section Details
 - 1.20 Building Section Details
 - 1.21 Elevation Plan
 - 1.22 Interior Detail



1
A2-1
Front Elevation
Scale: 1/4" = 1'-0"



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CONDO Back & Page

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CREEKSIDE
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E - 2 Butternut

ALBANY, A. L. J. R. A. R. A.

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Checked by: _____

REVIEWS

Further Information

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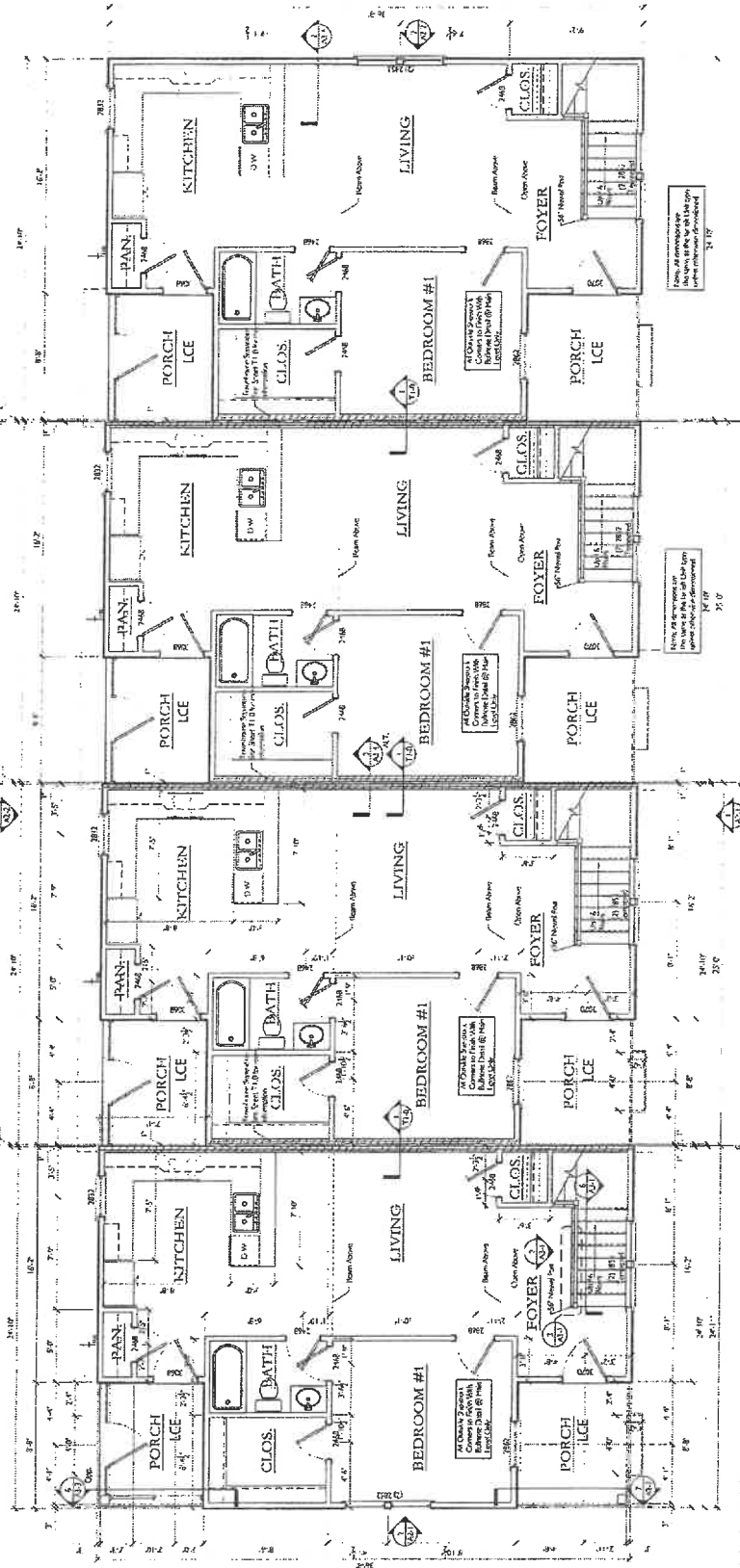


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1 Main Level Plan

Scale 1/8" = 1'-0"

0' 1" 2' 3' 4' 5' 6' 7' 8' 9' 10' 11' 12'
Graphic Scale

REVISIONS

Main Level Plan

A1-3

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**ISSUE FOR
CONSTRUCTION**
GREYSIDE
of AUBURN
Townhouse
E - 2 Butternut

ARCHITECT: A.L.A.R.M.A.
REVISED: 08/01
DATE: 08/01

Drawn by: SPM
Checked by: LN

SHEET INDEX	
Foundation Plan	1
First Floor Plan	A1-1
Second Floor Plan	A1-2
Attic Level Plan	A1-3
Upper Level Plan	A1-4
Lower Level Plan	A1-5
Interior Elevations	A2-1
Exterior Elevations	A3-1
Roofing Section/Detail	A3-2
Foundation Section/Detail	A3-3
Foundation Section/Detail	A3-4
Foundation Section/Detail	A3-5
Foundation Section/Detail	A3-6
Foundation Section/Detail	A3-7
Foundation Section/Detail	A3-8
Foundation Section/Detail	A3-9
Foundation Section/Detail	A3-10
Foundation Section/Detail	A3-11
Foundation Section/Detail	A3-12
Foundation Section/Detail	A3-13
Foundation Section/Detail	A3-14
Foundation Section/Detail	A3-15
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ISSUE #1
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JANUARY 2007
REVISIONS

Drawn by: **SK**
Checked by: **SK**

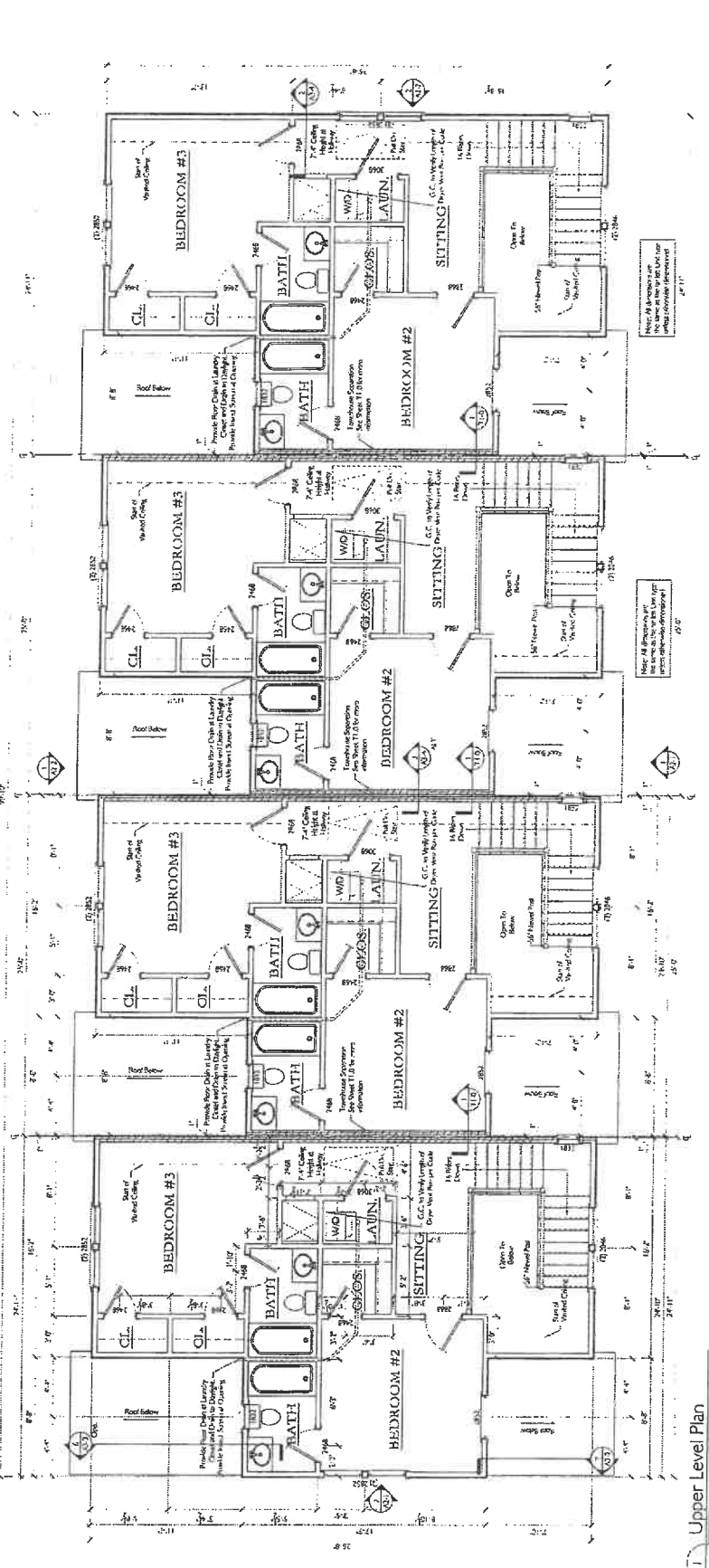
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 - 2nd Floor Plan
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 - 98th Floor Plan
 - 99th Floor Plan
 - 100th Floor Plan

REVISIONS

Upper Level Plan

A1-4

1437 1438 1439 1440



Upper Level Plan
A1-4

800 700 800
COND Book & Page

Roof Plan Legend
 --- Centerline of Roof Slope
 --- Edge of Roof Slope
 --- Edge of Roof Slope
 --- Centerline of Roof Slope

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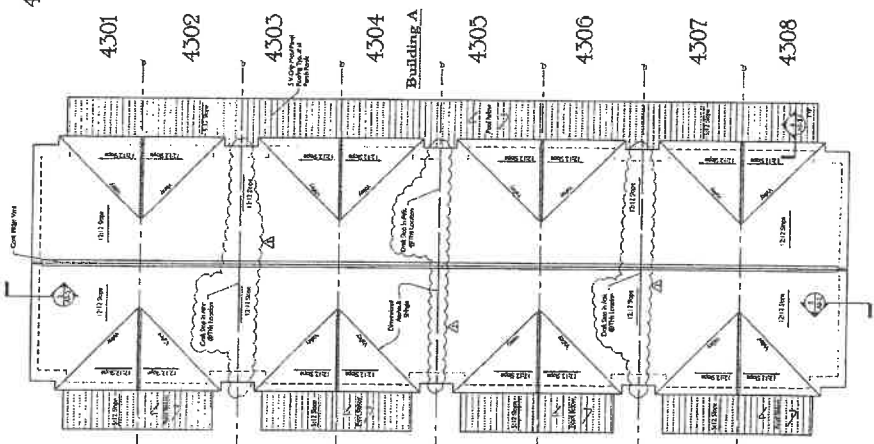
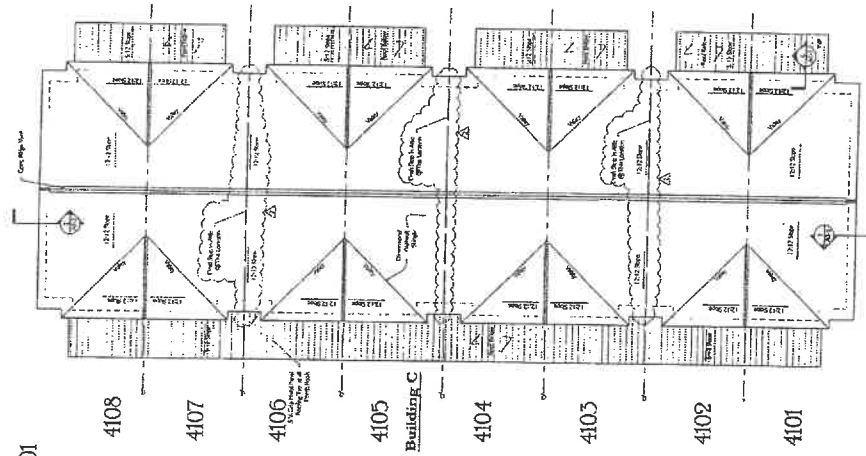
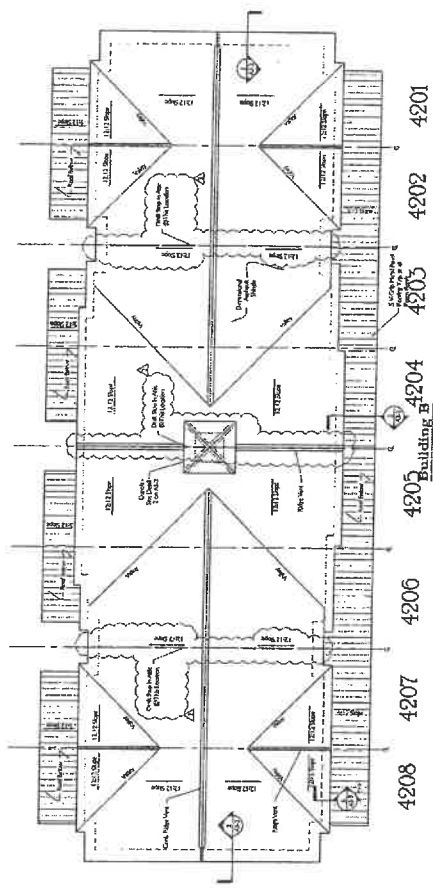
Issue for Construction
 Creekside of Anbun
 LODGE BUILDINGS

Sheet Index
 SHEET INDEX

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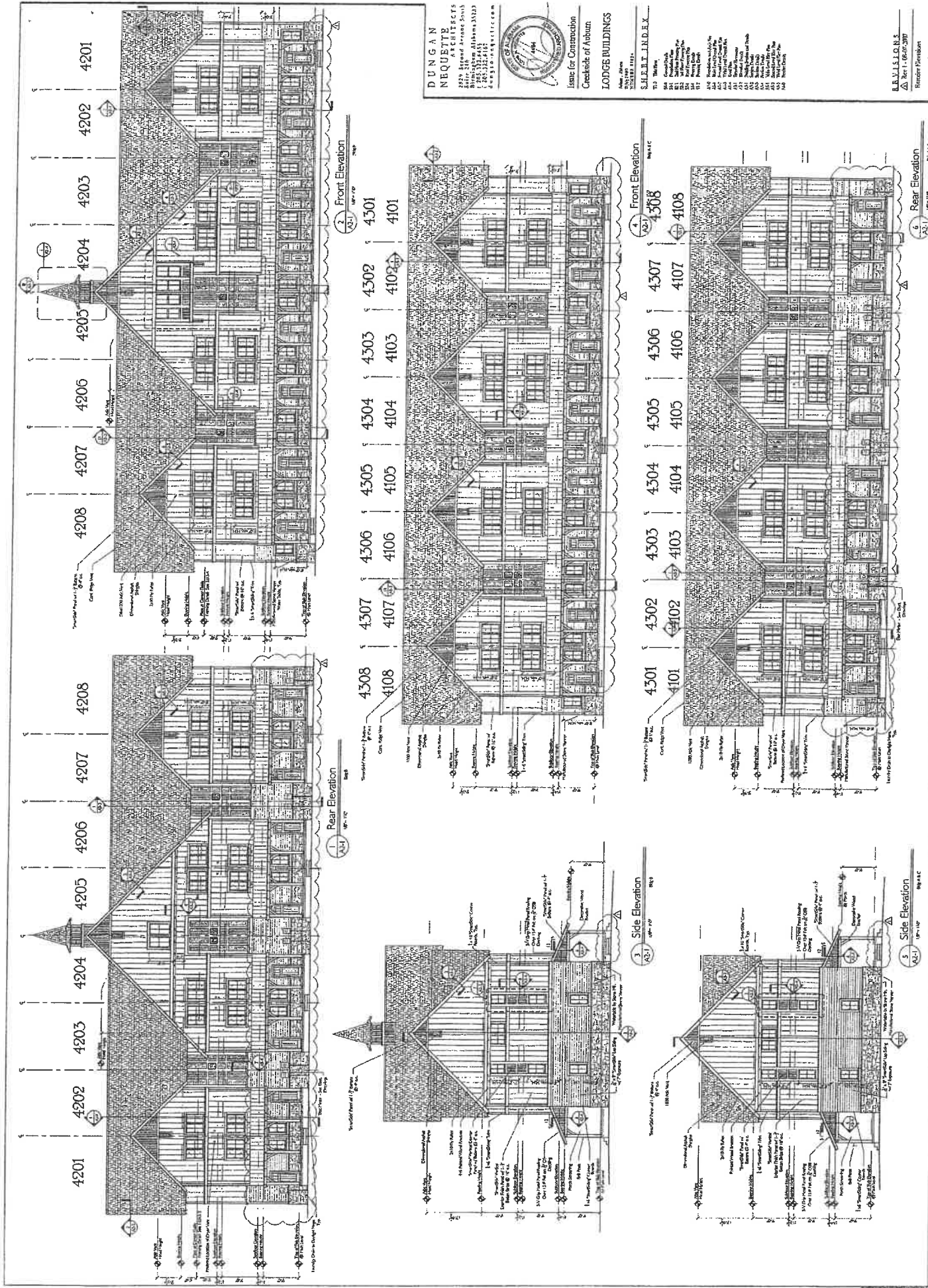
REVISIONS
 1 Rev 1 08-27-2007
 Root Plan

A1-4



8004 891
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1 Root Plan
 A1-1
 10/10/2007



Floor Plan - General Notes: 1. All dimensions are indicated to the center of a wall unless otherwise noted. 2. All doors are shown swinging to the right unless otherwise noted. 3. All windows are shown with the sill line unless otherwise noted. 4. All plumbing fixtures are shown with the center line unless otherwise noted. 5. All electrical symbols are shown with the center line unless otherwise noted. 6. All structural elements are shown with the center line unless otherwise noted. 7. All other elements are shown with the center line unless otherwise noted.	Title Block: Project Name: _____ Project Number: _____ Drawing Number: _____ Drawing Date: _____ Drawing Scale: _____ Drawing Author: _____ Drawing Checker: _____ Drawing Approver: _____
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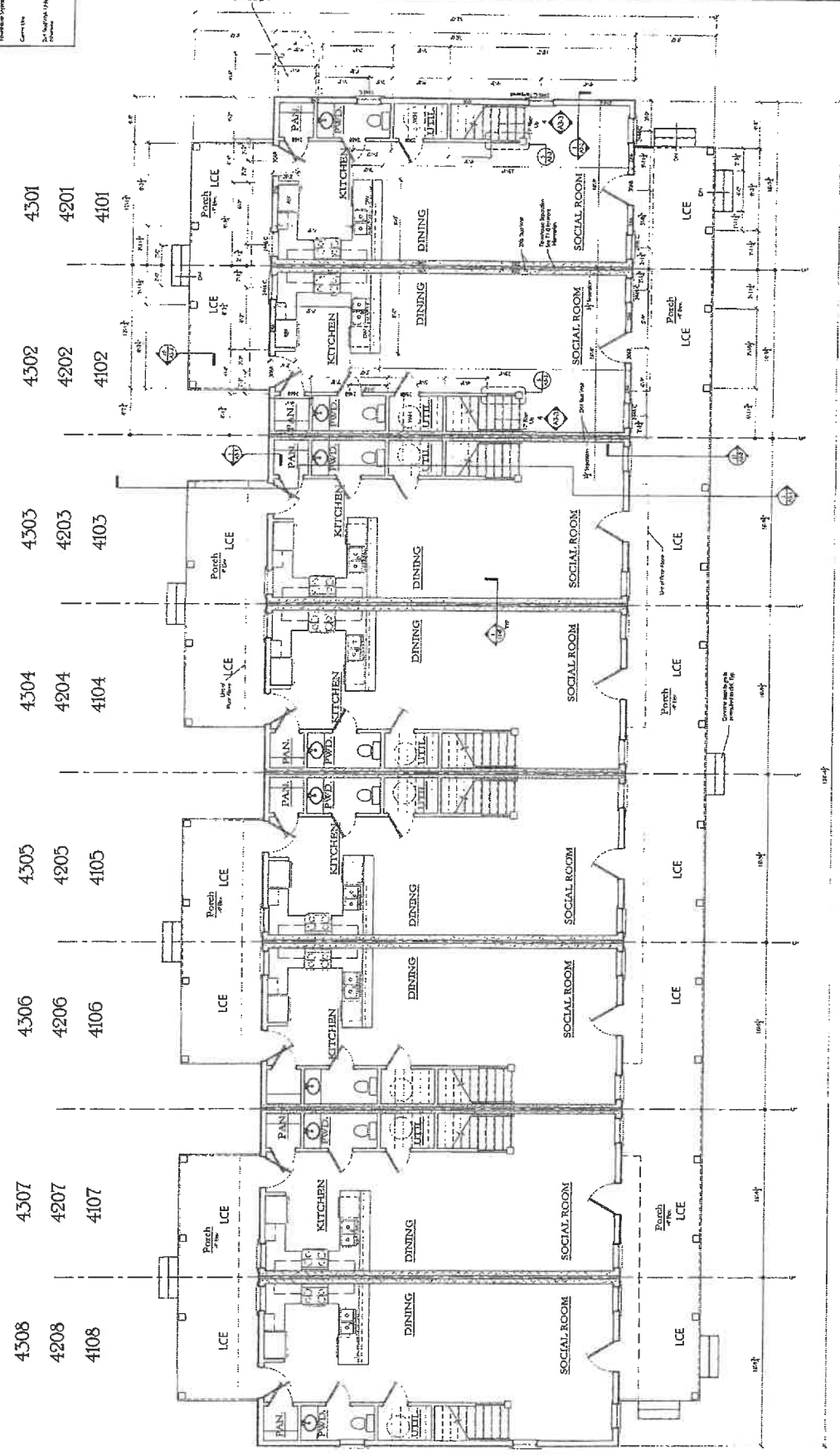
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 NEBOURIE
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 Email: info@duncan-nebourie.com



Issue for Construction
 Crestside of Auburn
 LODGE BUILDINGS

SHEET INDEX	
Sheet	Description
101	Site Plan
102	Foundation Plan
103	First Floor Plan
104	Second Floor Plan
105	Third Floor Plan
106	Fourth Floor Plan
107	Fifth Floor Plan
108	Sixth Floor Plan
109	Seventh Floor Plan
110	Eighth Floor Plan
111	Ninth Floor Plan
112	Tenth Floor Plan
113	Eleventh Floor Plan
114	Twelfth Floor Plan
115	Thirteenth Floor Plan
116	Fourteenth Floor Plan
117	Fifteenth Floor Plan
118	Sixteenth Floor Plan
119	Seventeenth Floor Plan
120	Eighteenth Floor Plan
121	Nineteenth Floor Plan
122	Twentieth Floor Plan
123	Twenty-first Floor Plan
124	Twenty-second Floor Plan
125	Twenty-third Floor Plan
126	Twenty-fourth Floor Plan
127	Twenty-fifth Floor Plan
128	Twenty-sixth Floor Plan
129	Twenty-seventh Floor Plan
130	Twenty-eighth Floor Plan
131	Twenty-ninth Floor Plan
132	Thirtieth Floor Plan
133	Thirty-first Floor Plan
134	Thirty-second Floor Plan
135	Thirty-third Floor Plan
136	Thirty-fourth Floor Plan
137	Thirty-fifth Floor Plan
138	Thirty-sixth Floor Plan
139	Thirty-seventh Floor Plan
140	Thirty-eighth Floor Plan
141	Thirty-ninth Floor Plan
142	Fortieth Floor Plan
143	Forty-first Floor Plan
144	Forty-second Floor Plan
145	Forty-third Floor Plan
146	Forty-fourth Floor Plan
147	Forty-fifth Floor Plan
148	Forty-sixth Floor Plan
149	Forty-seventh Floor Plan
150	Forty-eighth Floor Plan
151	Forty-ninth Floor Plan
152	Fiftieth Floor Plan

REVISIONS
 Main Level Overall Plan
 A1-1



Main Level Overall Plan
 A1-1

Notes: See General Notes. 1. All dimensions are given in feet and inches. 2. All dimensions are given in feet and inches. 3. All dimensions are given in feet and inches. 4. All dimensions are given in feet and inches. 5. All dimensions are given in feet and inches.	100% (100%) 100% (100%) 100% (100%) 100% (100%) 100% (100%)
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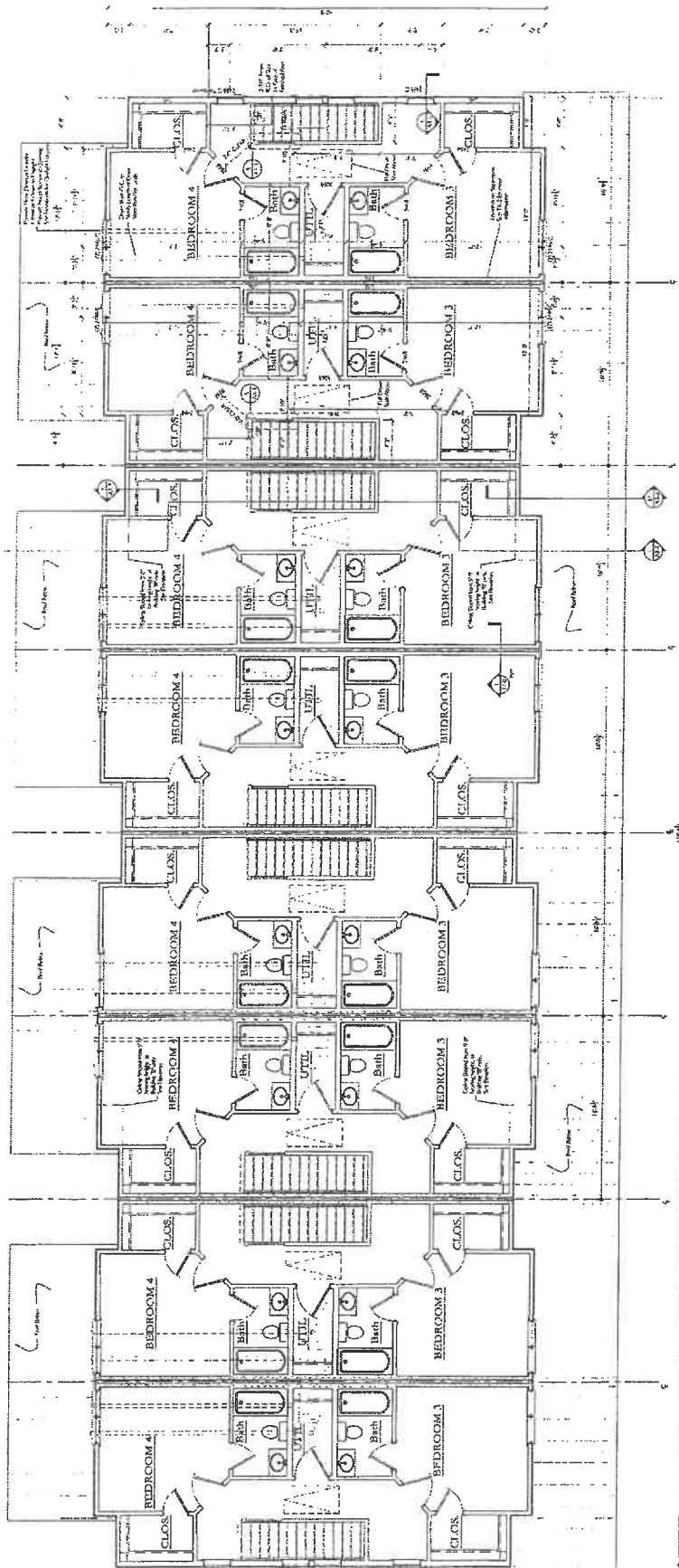
Issue for Construction
Credit: of Auburn
LODGE BUILDINGS

Project: Auburn
Project No.: 12345
Sheet: 1 of 1

- SCHEDULE**
- 1.00 General Notes
 - 2.00 Foundation
 - 3.00 Floor Slab
 - 4.00 Floor Joist
 - 5.00 Floor Deck
 - 6.00 Floor Joist
 - 7.00 Floor Deck
 - 8.00 Floor Joist
 - 9.00 Floor Deck
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 - 100.00 Floor Joist

R.E. & L.S. LO, M.E.
Third Level (Overall Plan)

A1-3



Third Level Plan
1/2" = 1'-0"

BOOK 668
PAGE 200

EXHIBIT "2"
TO
THIRD AMENDMENT
TO
DECLARATION OF CONDOMINIUM
OF
CREEKSIDE OF AUBURN CONDOMINIUMS

**UNIT OWNER'S OWNERSHIP INTERESTS IN COMMON ELEMENTS AND
LIMITED COMMON ELEMENTS**

<u>Condominium Unit Number</u>	<u>Ownership Interest in Common Elements and Limited Common Elements</u>
1031, 1064, 1065, and 1066.	0.17591%
2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 3201, 3202, 3203, 3204, 3205, 3206, 3207, 3208, 3209, 3210, 3211, 3212, 3213, 3214, 3215, 3216, 3217, 3218, 3219, 3220, 3221, 3222, 3223, and 3224.	0.19674%
1422, 1424, 1426, 1428, 1429, 1430, 1431, 1432, 1437, 1438, 1439, 1440, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 3101, 3102, 3103, 3104, 3105, 3106, 3107, 3108, 3109, 3110, 3111, and 3112.	0.22117%
1071, 1075, 1081, 1088, 1118, 1130, 1223, 1306, 1331, 1332, 1443, and 1454.	0.23083%
1093, 1094, 1244, 1245, 1335, 1336, 1337, 1417, 1448, 1449, and 1450.	0.23329%

<u>Condominium Unit Number</u>	<u>Ownership Interest in Common Elements and Limited Common Elements</u>
1073, 1079, 1120, 1126, 1205, 1312, 1327, 1334, 1414, 1421, and 1459.	0.23916%
1017, 1022, 1039, 1041, 1047, 1052, 1054, 1056, and 1061.	0.23954%
1026, 1027, 1028, 1029, 1067, 1068, 1069, and 1070.	0.25980%
1207, 1212, 1215, 1219, 1221, 1229, 1230, 1231, 1232, 1233, 1234, 1235, 1307, 1309, 1315, 1319, 1321, 1323, 1329, 1330, 1455, and 1456.	0.27874%
1018, 1023, 1038, 1040, 1046, 1051, 1053, 1055, and 1060.	0.28555%
1127, 1128, 1129, 1308, 1317, 1325, 1326, and 1457.	0.28574%
1074, 1080, 1119, 1125, 1206, 1313, 1328, 1333, 1413, 1420, and 1458.	0.28688%
1035, 1037, 1043, 1044, 1045, 1048, 1049, 1050, 1057, 1058, 1059, 1062, and 1063.	0.28707%
1072, 1076, 1082, 1087, 1117, 1131, 1224, 1305, 1442, and 1453.	0.28972%
1001, 1002, 1005, 1006, 1009, 1010, 1013, 1014, 1101, 1102, 1105, 1106, 1109, 1110, 1113, and 1114.	0.29729%
1208, 1209, 1240, 1241, 1301, 1302, 1401, 1402, 1405, 1406, 1433, and 1434.	0.30089%
1083, 1084, 1121, 1122, 1201, 1202, 1225, 1226, 1236, 1237, 1444, and 1445.	0.30278%
1091, 1214, 1220, 1316, 1318, 1320, 1415, and 1419.	0.33346%
4101, 4102, 4103, 4104, 4105, 4106, 4107, 4108, 4201, 4202, 4203, 4204, 4205, 4206, 4207, 4208, 4301, 4302, 4303, 4304, 4305, 4306, 4307, and 4308.	0.33630%
1077, 1078, 1090, 1092, 1216, 1217, 1222, 1310, 1314, 1322, 1324, 1409, 1410, 1411, 1412, 1423, 1425, 1427, and 1441.	0.33971%

<u>Condominium Unit Number</u>	<u>Ownership Interest in Common Elements and Limited Common Elements</u>
1003, 1004, 1007, 1008, 1011, 1012, 1015, 1016, 1103, 1104, 1107, 1108, 1111, 1112, 1115, and 1116.	0.34274%
1089, 1213, 1218, 1311, 1416, and 1418.	0.34596%
1019, 1020, 1021, 1024, 1025, 1030, 1032, 1033, 1034, 1036, and 1042.	0.34634%
1210, 1211, 1242, 1243, 1303, 1304, 1403, 1404, 1407, 1408, 1435, and 1436.	0.34785%
1085, 1086, 1123, 1124, 1203, 1204, 1227, 1228, 1238, 1239, 1446, and 1447.	0.34823%

RULES AND REGULATIONS CONCERNING THE USE OF
CREEKSIDE OF AUBURN CONDOMINIUMS

Revised July 1, 2014

In addition to those restrictions, rules and regulations contained in the Declaration of Condominium of Creekside of Auburn Condominiums (the "Declaration"), the following "Rules" are hereby adopted by Creekside of Auburn Condominium Association, Inc., an Alabama non-profit corporation (the "Association"). Capitalized terms used herein and not otherwise defined herein shall have the meaning ascribed to such terms in the Declaration.

I. GENERAL COMMUNITY RULES

1. Unit Owners, their lessees, and tenants in the Leasing program are considered "Residents" of Creekside of Auburn Condominiums (the "Condominium"). The facilities of the Condominium are for the use of all Residents and their invited guests.
2. Each Resident shall abide by the terms and conditions of the Declaration, the Articles of Incorporation of the Association (the "Articles"), the Bylaws of the Association (the "Bylaws"), and these Rules.
3. Each Unit is hereby restricted to residential use; however, a Resident 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 and other legal requirements for the Condominium; (iii) the business activity does not involve door-to-door solicitation of Residents of the Condominium; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Condominium which is noticeably greater than that which is typical of units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Condominium and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Residents of the Condominium, as may be determined in the sole discretion of the Board.
4. Solicitation shall not be permitted on the Condominium grounds, either by Residents or outside solicitors, without the prior written consent of the Board of Directors.
5. Each Resident shall keep their Unit in a good state of preservation and cleanliness, and shall not sweep or throw or permit to be swept or thrown therefrom, or from the doors or windows or balconies thereof, any dirt or other substance. All garbage and refuse shall be deposited with care in garbage containers intended for such purpose only at such times and in such manner as the Board of Directors may direct. No trash or other articles shall be

burned, and all disposals shall be in accordance with such further rules and regulations as shall, from time to time, be promulgated by the Board of Directors and posted.

6. Patio and balcony areas are to be kept in a clean and orderly manner. They are not to be used as storage areas and articles are not to be hung over railings. Electric grills only may be used by Residents on their patio or balcony area; gas and charcoal grills are strictly prohibited. Trash cans are strictly prohibited on patio and balcony areas. Bicycles, motorcycles, scooters and other conveyances are not to be parked on or chained to patio and balcony areas. Appropriate patio furniture only is allowed on patio and balcony areas. Throwing or dropping any objects off of the patio or balcony areas or from windows of the Unit is strictly prohibited.
7. A Unit Owner may identify such Owner's Unit with a name plate of a type and size approved by the Board of Directors and mounted in a place and manner approved by the Board of Directors. No other sign, advertisement, notice or other lettering shall be exhibited, inscribed, painted or affixed by any Unit Owner or any part of the outside of a building, hung from or placed on windows, window sills, balconies, or otherwise displayed, without the prior written consent of the Board of Directors, except signs used by the Developer in the sale or leasing of Units as provided in the Declaration. Blinds or shutters located on the exterior of the Unit may not be painted or altered by the Unit Owner.
8. Unit Owners are reminded that alteration and repair of the Common Elements is the responsibility of the Association except for those matters which are stated in the Declaration to be the responsibility of a Unit Owner. No work of any kind is to be done upon or affecting those portions of exterior building walls or interior boundary walls which are the responsibility of the Association without first obtaining the approval required by the Declaration.
9. Unit Owners shall keep their hot water heater on and operational at all times regardless of whether said Unit Owner's Unit is occupied.
10. The Association, its workmen, contractors and agents, shall have the right of access to any Unit at any reasonable hour of the day for the purpose of making inspections, repairs, replacements, or improvements, or to remedy any conditions which would result in damage to the portions of the building, or for any purpose permitted under the terms of the Declaration or the Bylaws. Except in case of emergency, entry will be made by prearrangement with the Owner. In the event the Association finds there are vermin, insects or other pests within any Unit, it may take such measures as it deems necessary to control or exterminate the same.

located on the Condominium Property that can be audibly heard from such Unit or vehicle, respectively.

7. No vehicles of any type (including, but not limited to, moving vans, delivery vehicles, vehicles of maintenance or repair contractors or service or utility providers) shall be allowed upon any lawn, walkway or other landscaped area, except by written permission of the Board of Directors and with adequate limitations, protections and repair provisions for such activities.
8. No Resident shall permit anything to be done or kept in a Unit or in the Common Elements or Limited Common Elements which will result in any increase of fire or hazard insurance premiums or the cancellation of insurance on any part of the Condominium Property, or which would be in violation of any law. No one shall use or permit to be brought into any Unit or upon any of the Common Elements any flammable oils or fluids such as gasoline, kerosene, naphtha or benzene, or other explosives or articles deemed hazardous to life, limb or property, without the written consent of the Board of Directors.
9. No Resident may conduct a garage sale, moving sale, rummage sale, or similar activity at or about the Condominium, whether within a Unit or otherwise.
10. Residents shall not remove, paint or change the appearance of the original interior blinds placed in the Units by Developer except as necessary for routine repair or maintenance and, should replacement thereof be necessary, such blinds shall be replaced by the Resident with blinds of the same size, quality, color and material as the original blinds. Use of (i) foil, bed sheets, flags and other similar unsightly non-traditional window treatment materials, and (ii) neon or flashing signs and advertising signs, on the inside of windows is strictly prohibited.
11. The following activities are prohibited within the Condominium unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:
 - (a) Possession and/or use, either permanently or temporarily, of any gas or charcoal grilling equipment adjacent to or near the exterior of any Unit, other than those provided in designated areas by the Condominium.
 - (b) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units.
 - (c) Any activity which violates governmental laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation.

(d) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit.

(e) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Elements or to the occupants of other Units.

(f) Outside burning of trash, leaves, debris or other materials.

(g) Use or discharge of any radio, loudspeaker, horn, whistle, bell or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes.

(h) Use and discharge of firecrackers and other fireworks.

(i) Accumulation of rubbish, trash, or garbage.

(j) Discharge of firearms; however, the Board shall have no obligation to take action to prevent or stop such discharge.

(k) Capturing, trapping or killing of wildlife within the Condominium, except in circumstances posing an imminent threat to the safety of persons using the Condominium or for customary methods of control of common vermin.

(l) Any activities which materially disturb or destroy the vegetation, wildlife, or air quality within the Condominium or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution.

(m) Operation of motorized vehicles on pathways or trails maintained by the Association.

(n) Any construction, erection, placement, or modification of anything, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the Declaration. This shall include, without limitation, signs, inappropriate patio furniture, basketball hoops, swing sets, similar sports and play equipment, beer pong tables, clotheslines or other clothes drying facilities, garbage cans, trash bags, hammocks, portable swimming pools, hedges, walls, dog runs, animal pens, or fences of any kind.

(o) Placement or use of a waterbed in any Unit.

(p) Placement or use of colored light bulbs in any balcony/patio or other light fixture that is visible from the outside of any building containing a Unit.

(q) Placement, either permanently or temporarily, of more than one cooler on the porch or patio of a Unit.

(r) Placement, either permanently or temporarily, of any personal property on the common property of the Condominium, other than passenger vehicles in designated parking spaces.

III. NON-SMOKING POLICY

1. Smoking of any kind, including e-cigarettes, is prohibited in all Condominium Common Elements, including the Club House, swimming pool area, recreation field, tennis court, sidewalks, driveways, and parking areas.

IV. SWIMMING POOL

1. All persons using the swimming pool located on the Condominium Property do so at their own risk. The Association is not responsible for any accident or injury in connection with use of the pool or for any loss or damage to personal property. Persons using the pool area agree not to hold the Association liable for any actions of whatever nature occurring within the pool area.
2. Persons twelve (12) years of age or under must be accompanied at all times by an adult.
3. Except by prior agreement with the Board of Directors, the number of persons in any one group in the pool at any one time will not exceed the number of Residents of a Unit, plus three (3) guests. No guest or invitee is to be permitted in the pool area unless accompanied by a Resident.
4. Residents are responsible for the conduct of their guests at all times, and for the careful observance of all safety and sanitation precautions. Any person having an apparent or known skin disease, sore or inflamed eyes, cough, cold, nasal or ear discharge, or any communicable disease shall be excluded from the pool.
5. No boisterous or rough play shall be permitted in the pool, or in the pool area. Swimming alone when no other person is in the immediate pool area is prohibited.
6. All persons are requested to cooperate in maintaining maximum cleanliness and tidiness in the swimming pool area.
7. No glassware shall be brought into the pool area.

8. Any furniture provided by the Association to be used in connection with the pool shall not be removed from the pool area.
9. The pool shall be used in accordance with such rules and regulations as shall, from time to time, be promulgated by the Board of Health of Lee County, Alabama, and/or by the Board of Directors, which rules shall be posted by the Board of Directors.
10. Use of the pool is reserved for persons eighteen (18) years of age and over, after 7 PM local time. The pool will be closed from 10 P.M. to 8 A.M., local time, and during such other times and seasons as may be determined by the Board of Directors.
11. Access to the pool area may be limited by the Association by requiring an access card. In any such event, the Association will provide each Resident with an access card. Use of access cards may be monitored.
12. Head first diving into the swimming pool shall not be permitted.
13. Vandalism of any equipment or any facility in the pool area is prohibited and the cost of repair for any damage caused by a Resident or their guest will be a special assessment against the Resident responsible therefor. In addition, the Association reserves the right to pursue legal action against anyone found guilty of vandalism.

V. CLUB HOUSE

1. All persons using the Condominium's Club House, including the fitness equipment located therein, do so at their own risk. The Association is not responsible for any accident or injury in connection with the use of the Club House or for any loss or damage to personal property. Persons using the Club House agree not to hold the Association liable for any actions of whatever nature occurring at or in connection with the use of the Club House.
2. No person under the age of sixteen (16) shall be permitted to use the Club House unless accompanied by an adult resident.
3. Except by prior arrangement with the Board of Directors, the number of persons in any one group using the Club House at any one time will not exceed the Residents of a Unit plus three (3) guests, unless the Club House Theater Room is being used. The number of persons in any one group using the Theater Room at one time shall not exceed twenty-four (24) people. No guest or invitee is to be permitted to use Club House facilities unless accompanied by a Resident.
4. Residents are responsible for the conduct of their guests at all times, and for the careful observance of all safety and sanitation precautions.

5. No boisterous or rough play shall be permitted in, at or upon the Club House. All persons are requested to cooperate in maintaining cleanliness and tidiness in the Club House.
6. Tobacco, open containers and glassware are not to be brought into or upon the Club House.
7. Access to the Club House may be limited by the Association by requiring an access card. In any such event, the Association will provide each Resident with an access card. Use of access cards may be monitored.
8. The Club House shall be open for use by Residents and their guests twenty-four (24) hours a day, except as is otherwise decreed by the Board of Directors.
9. Vandalism of any equipment or any facility in the Club House is prohibited and the cost of repair for any damage caused by a Resident or their guest will be a special assessment against the Resident responsible therefor. In addition, the Association reserves the right to pursue legal action against anyone found guilty of vandalism.

VI. PETS

1. Residents shall be limited to two (2) pets per Unit, which pet shall be only a dog or cat with a maximum weight for each pet of fifty (50) pounds; however, pit bulls, Chows, Rottweiler's, and Doberman Pinschers are not allowed. All pets must be registered according to the Association's Pet Registration Program and all pets must wear at all times the current tag issued as a part of this program. Unit owners and their lessees must follow all requirements as stipulated in the Pet Registration Program. Tenants in the leasing program must follow all requirements of the pet addendum to their lease agreement.
2. Pets shall only be walked in grass areas and sidewalks of the Condominium and then only when on a leash and pet owners shall be responsible for the clean-up and disposal of all pet droppings.
3. Loud barking or other loud noises made by pets in Units is prohibited and shall be considered and treated as a public nuisance.
4. All pets shall be kept indoors at all times unless under the immediate physical control of the owner of any such pet.
5. No animal or pet shall be kept for commercial purposes.
6. Additional rules may be stipulated by the Association's Pet Registration Program.

VII. ANTENNAS

1. Any Resident desiring to install an Antenna must submit a request in writing to the Association's management agent. The request must include specific details regarding the intended placement of the Antenna and related equipment and wiring, and must identify who (or what company) will be installing the Antenna. Installation may commence only after the Association's management agent has reviewed and approved the details of the proposed installation. Antennas may not be placed anywhere other than on the exterior of the Unit. Tenants in the leasing program are not allowed to request permission to install an antenna unless the Owner of the Unit agrees in writing to allow the installation. Any Resident who installs an antenna without receiving prior approval will be fined on a weekly basis until they request a review and receive approval of the current antenna installation. If approval is denied or the request to review is not sought within two weeks of the installation, the Association reserves the right to remove the antenna at the Resident's expense. The Resident shall be responsible for repair of all damages caused by the installation, maintenance or removal of the antenna and related equipment and/or any penetration through Common Elements or Limited Common Elements.
2. An antenna is defined as any device that is used for the receipt of video programming services, including direct broadcast satellite (DBS), multipoint distribution service (MDS), and local television broadcast signals (TVBS); and any device used to receive or transmit fixed wireless signals (FWS). A mast, cabling, supports, guide wires, conduits, wiring, fasteners, or other accessories necessary for the proper installation, maintenance, and use of an antenna shall be considered part of the antenna. All other definitions, terms, requirements, regulations, and restrictions governing the installation of an antenna are available by contacting the Association's management agent.
3. In addition to any other remedy provided in the Rules, in the Declaration or by applicable law, if antenna installation or maintenance issues pose a serious, immediate safety hazard, the Association may seek injunctive relief to prohibit or seek removal of the installation if time permits; otherwise, the Association may take such action is necessary to prevent injury to persons or property at the Antenna Owner's expense in accordance with the Declaration and the Bylaws.

VIII. COMPLAINTS; ENFORCEMENT

1. Complaints regarding the management of the Condominium or regarding actions of other Residents or persons shall be made in writing to the Board of Directors. The Board of Directors may assign to one or more persons, or to a manager, full responsibility for the enforcement of all or any one of these Rules. Any complaint or dispute as to any of these Rules, or as to any application thereof, shall be made in writing to the Board of Directors setting forth the nature of the matter complained of, and the names of all parties aggrieved and/or charged by reason of such matter. The Board of Directors may, in its sole discretion,

decide the complaint without a hearing. In the event the Board of Directors elects to have a hearing upon such complaint, not less than five (5) days notice thereof shall be given in writing to each person named in the complaint as aggrieved and/or charged, stating the date, time and place of such hearing. Proceedings before the Board of Directors shall be informal, without technical rules of evidence, and each party aggrieved and/or charged shall be entitled to be present in person or by their attorney, and to be heard.

2. The Board's determination shall be dispositive in the event of any disagreements concerning violations, including without limitation, disagreements regarding the proper interpretation and effect of these Rules. In the event that any person, firm, or entity subject to these Rules, fails to abide by them, as they are interpreted by the Board, such person, firm, or entity shall be liable to be fined by the Association for each such failure to comply or other violation of these Rules. Written notice of all fines and the opportunity to be heard through an elective hearing process shall be provided to such person, firm or entity in accordance with the Alabama Uniform Condominium Act. The amount of such fine, including increased fines for repeat offenses or penalties for failure to pay, shall be in the sole discretion of the Board of Directors provided that it complies with any applicable law and the Declaration. If the Board deems it necessary, it may bring action at law or in equity in the name of the Association to enforce these Rules, including any provision herein for fines. In the event any such action is instituted, and reduced to judgment in favor of the Association, the Association shall, in addition, be entitled to recover its costs and attorneys' fees incurred in enforcing these Rules, whether before or at trial, on appeal, in bankruptcy or in post-judgment collection.
3. Any consent or approval given under these Rules by any person designated as manager or any person or committee designated as being responsible for the enforcement of any of these Rules, and/or for the use of any Common Element, shall be revocable at any time by the Board of Directors.

IX. AMENDMENT

1. These Rules are subject to amendment by the Board of Directors and to the promulgation of further rules by the Board of Directors and/or by the Association.