

557193

3119

REAL 646 PAGE 486

Rev. 3

12-87

Balch & Bingham

2600

ARTICLES
OF
INCORPORATION
OF
TRACE CROSSINGS
BUSINESS ASSOCIATION, INC.
(a corporation not for profit)

BOOK 033 PAGE 240

Herbert J. G. G. G.

ARTICLES OF INCORPORATION
OF
TRACE CROSSINGS BUSINESS ASSOCIATION, INC.
(a corporation not for profit)

TO THE JUDGE OF PROBATE OF JEFFERSON COUNTY, ALABAMA:

This is to certify that, for the purpose of forming a corporation pursuant to the provisions of the "Alabama Nonprofit Corporation Act" [1975 Code of Alabama Section 10-3A-1, et seq.], the undersigned do hereby make and file the following Articles of Incorporation.

ARTICLE I

NAME

The name of the corporation shall be:

"TRACE CROSSINGS BUSINESS ASSOCIATION, INC."

The corporation is sometimes referred to herein as the "Corporation" or the "Association".

ARTICLE II

DEFINITIONS

SECTION 2.1 Association: The Trace Crossings Business Association, Inc., its successors and assigns.

2.2 Association Land: That part of Trace Crossings Property which may at any time hereafter be owned by the Association for so long as the Association or successor thereof may be the owner thereof.

2.3 Board: The Board of Directors of the Association.

2.4 By-Laws: The duly enacted By-Laws of the Association.

2.5 Commercial Parcel: Any unit, lot, part or parcel of Trace Crossings Property designed for a commercial or business purpose or use, including apartment

projects and residential or business condominiums located on a parcel or parcels which are subjected to the Declaration.

2.6 Declaration: The Declaration of Protective Covenants of Trace Crossings (Business) applicable to Member's Property which shall be recorded in the Probate Records of Jefferson and Shelby Counties, Alabama, as the same may from time to time be supplemented or amended in the manner described therein.

2.7 Deed: Any deed, assignment, lease, or other instrument conveying fee title or a leasehold interest in any part of Trace Crossings Property subjected to the Declaration.

2.8 Developer: Harbert-USR Realty Joint Venture, an Alabama General Partnership, its successors and assigns.

2.9 Member: A person or other entity who is a record owner of Member's Property.

2.10 Member's Property: That portion of Trace Crossings Property which shall has been submitted to the Declaration for the purpose of creating a lien for assessments in favor of the Association. See also, Section 2.13.

2.11 Open Spaces or Common Areas: Trace Crossings Property which is conveyed to the Association by the owners or Developers of Trace Crossings or a part thereof.

2.12 Parcel: A Commercial Parcel.

2.13 Property or Subject Property or Member's Property: That part of Trace Crossings Property subjected to the Declaration.

2.14 Resident: Any person or persons occupying or leasing Member's Property.

2.15 Trace Crossings or Trace Crossings Property: The property described as Trace Crossings in the Declaration and other property which may be acquired by

Developer and developed as a part of Trace Crossings. That part of Trace Crossings subjected to the Declaration is referred to as "Property", "Subject Property", or "Member's Property".

ARTICLE III

PRINCIPAL OFFICE AND AGENT

The initial registered office of the Association shall be Chace Park South, Building 500, Suite 130, Birmingham, Alabama 35244. The registered agent of the Corporation shall be Joseph E. McKay, Chace Park South, Building 500, Suite 130, Birmingham, Alabama 35244.

ARTICLE IV

OBJECTS, PURPOSES AND POWERS

SECTION 4.1 This Association shall be a corporation not for profit organized for non-profitable purposes and activities and no part of its net earnings shall inure to the benefit of any private shareholder or member of the Association.

4.2 The objects and purposes for which this Corporation is organized are as follows:

4.2.1 To establish, maintain, operate and provide all community services of every kind and nature required or desired by the owners of real property within that part of Trace Crossings which shall be made subject to the jurisdiction of the Association by the Declaration or any supplemental declaration thereto, or other declaration, deed or instrument.

4.2.2 To own, acquire, build, operate, and maintain recreation parks, playgrounds, common drives and footways, including buildings, structures, and personal properties incident thereto, which property is hereinafter referred to as the "Open

"Spaces" or "Common Areas"; maintain unkept lands and trees; maintain roadways and lakes within Trace Crossings, the water and drainage systems, and other areas and structures beneficial or useful to Member's Property; supplement municipal and other governmental services; fix assessments to be levied against the Member's Property and the owners of such Member's Property; enforce any and all covenants, restrictions and agreements applicable to the Open Spaces or to Member's Property; perform the duties of the Architectural Committee for Trace Crossings (as such term is defined in the Declaration) at such time as such duties are delegated to the Association as set forth in the Declaration; and pay taxes, if any, on the Open Spaces; and, insofar as permitted by law, to do any other thing that, in the opinion of the Board, will promote the common benefit and enjoyment of the Members.

4.2.3 To provide for the security of its Members, the property of its Members, Residents and property of Residents of Trace Crossings; to provide for road maintenance, parking within roadway areas, and traffic control; to provide for garbage and waste collection and disposal; to present a unified effort to the members in protecting the value of the property of Members; to provide fire protection services to Trace Crossings or any part thereof.

4.2.4 To own, operate and manage the Common Areas or Open Spaces located in Trace Crossings; to perform and carry out the acts and duties incident to the administration, operation and management of said Open Spaces in accordance with the terms, provisions, and conditions contained in these Articles of Incorporation and to own, operate, lease, sell, trade and otherwise deal with such property, whether real or personal, as may be necessary or convenient.

4.2.5 To provide for any or all projects, services, facilities, studies, programs, systems and properties relating to: parks, recreational facilities or services; drainage systems; streets, roads, highways, walkways, curbing, gutters, sidewalks, trees,

flowers and landscaping, fountains, benches, shelters, directional and informational signs, walkways and bridges, and street, road and highway lighting facilities; facilities for the collection, treatment and disposal of garbage and refuse; facilities or arrangement for facilities for collection and treatment of sewage; heliports; facilities for the fighting and preventing of fires; auditoriums, galleries, halls, amphitheaters, theaters and educational buildings and facilities, including equipment, supplies and accessories in connection therewith; storage and maintenance yards, garages and other buildings and facilities deemed necessary or desirable by the Board in connection with the administration, management, control and operation of the Association; traffic engineering programs and parking facilities; lakes, dams, parks, playgrounds, boat basins and marinas, and other related or unrelated recreational facilities; and any and all other improvements, utilities, facilities and services that the Board shall find to be necessary, desirable or beneficial to the interest of the Property, Members and Residents of Trace Crossings.

4.2.6 To do such other things as may be necessary and proper for the carrying out and accomplishment of the above objects and purposes and of such other objects and purposes as are deemed necessary and proper by its Directors. The objects and purposes expressed herein relate to services, benefits and expenditures pertaining to, derived from, or in connection with Trace Crossings or areas thereof intended for and available for the common use and enjoyment or need of the Members.

4.3 In furtherance of the aforesaid objects, purposes and powers, the Association shall have and exercise all of the powers of a Corporation Not for Profit organized and existing under the laws of the State of Alabama and all the powers reasonably necessary to implement the powers of the Association, which powers shall include but are not limited to, the power:

4.3.1 To make, levy and collect assessments and annual, monthly or quarterly maintenance charges from its Members and to expend the proceeds of such assessments and charges for the benefit of its Members.

4.3.2 To contract with others to provide the services, benefits and advantages desired.

4.3.3 To enforce by legal action suits on behalf of the Association.

4.3.4 To make, establish and enforce reasonable rules and regulations governing the use of the Open Spaces.

4.3.5 To maintain, repair, replace and operate those portions of the property that the Association has the duty or right to maintain, repair, replace and operate under these Articles and the By-Laws of the Association.

4.3.6 To contract for the management of the property and to delegate to such contractors all or a part of the powers and duties of the Association.

4.3.7 To employ personnel to perform the services required or authorized by these Articles, the Declaration and by the By-Laws of the Association.

4.3.8 To purchase insurance upon the Open Spaces for the protection of the Association and its Members.

4.3.9 To reconstruct improvements constructed on the real property after casualty or other loss.

4.3.10 To make additional improvements on and to the Association Property.

4.3.11 To acquire and enter into agreements whereby it acquires leaseholds, memberships or other possessory or use interests in lands or facilities including but not limited to marinas, lakes and other recreational facilities, whether or not contiguous.

4.3.12 To enforce by legal action the provisions of these Articles, the By-Laws and the Declaration.

ARTICLE V

MEMBERS

BOOK 033 PAGE 247
SECTION 5.1 The Members of this Association shall consist of all record owners of Member's Property, but shall not include mortgagees or other holders of security interests only. No person other than the Developer of Trace Crossings or designees of such Developer, who does not own real property in Trace Crossings, may be a Member of the Association. The first Board of Directors named in these Articles of Incorporation and other Directors selected by Class B members, regardless of such ownership of real property in Trace Crossings, shall also be Members of the Association until December 31, 2010, or until all the then Class B members so designate in a writing delivered to the Association, whichever shall first occur. Fees, dues, assessments and charges required of Members shall be set in the manner prescribed by the By-Laws of the Association and in the Declaration.

5.2 Membership in this Association cannot be assigned, hypothecated or transferred in any manner except as may be provided in the By-Laws.

5.3 The Association shall have two classes of voting membership: Class A and Class B.

Class A members shall be all persons owning one or more Commercial Parcels constituting Member's Property, excepting those persons (or other entities) who are Class B members. In the event a Commercial Parcel is submitted to a condominium form of ownership, the condominium as a whole shall be considered to be one member.

Class B members shall be Harbert-USR Realty Joint Venture, an Alabama general Partnership, and any successor in ownership to all or part of the Developer's interest in Trace Crossings. The Class B membership shall terminate and the then Class B members shall become Class A members at such time as (a) all the then Class B members so designate in a writing delivered to the Association or (b) on December 31, 2010, whichever shall first occur; provided, that notwithstanding the foregoing, the Class B membership shall not terminate so long as the Developer shall own any undeveloped Parcel.

When entitled to vote, each Member shall have one vote for each Parcel owned by such Member. In the event a Commercial Parcel is submitted to a condominium form of ownership, the condominium as a whole shall have only one (1) vote, to be cast by a representative designated in writing to the Association by the condominium association.

Until December 31, 1999, or such earlier time as the Class B membership shall terminate as provided herein, the Class B members shall be vested with the sole voting rights in the Association, except on such matters as to which the Declaration, these Articles of Incorporation, or the By-Laws specifically require a vote of each and every class of membership, or except as required by law.

ARTICLE VI

TERM

This Corporation shall exist perpetually.

ARTICLE VII

SUBSCRIBERS

The names and residences of the three incorporators of the Corporation are as follows:

- | | |
|----------------------|--|
| (1) Joseph E. McKay | 1916 River Woods Road
Birmingham, Alabama 35244 |
| (2) Roger Yanko | 2501 Woodmeadow Place
Birmingham, Alabama 35216 |
| (3) James Rutherford | 347 Parker Drive
Pittsburgh, Pennsylvania 15216 |

ARTICLE VIII

BOARD OF DIRECTORS

The business and affairs of the Association shall be managed by a Board of Directors consisting of not less than three (3) nor more than fifteen (15) Directors. The first Board of Directors shall consist of three (3) members. Change in the maximum number of Directors shall be permitted by amendment to the By-Laws of the Association or by amendment to the Articles of Incorporation. The Board of Directors shall be elected by the Members of the Association entitled to vote. The names and addresses of the first Board of Directors who shall hold office until December 31, 1999, or until all the then Class B members so designate in a writing delivered to the Association whichever shall first occur, and thereafter until their successors are elected and have qualified, are as follows:

- | | |
|----------------------------|--|
| Class I. Joseph E. McKay | 1916 River Woods Road
Birmingham, Alabama 35244 |
| Class II. Roger Yanko | 2501 Woodmeadow Place
Birmingham, Alabama 35216 |
| Class II. Thomas G. Howard | 4690 Sussex Road
Birmingham, Alabama 35244 |

Provided however, that at a time no later than December 31, 1999, the number of Directors shall be increased to seven (7), at least three (3) of whom are elected by Class A Members and four (4) of whom are elected by Class B Members. After December 31, 2010, and for so long as there are Class B Members, the Class B Members shall be allowed to elect one (1) Director.

Subsequent to December 31, 1999, or when all of the then Class B members so designate in a writing delivered to the Association, whichever shall first occur, Class I Directors shall be elected for terms of two (2) years and Class II Directors shall be elected for a term of three (3) years.

The Directors of the Association shall be elected at the time and in the manner provided for in the By-Laws.

Among other things, the Board of Directors shall have authority to make and alter By-Laws and the further authority to exercise all such other powers and to do all such other lawful acts and things which this Association, or its Members might do, unless prohibited from doing so by applicable laws, or the Articles of Incorporation, or by the By-Laws of this Association.

ARTICLE IX

OFFICERS

The officers of the Association shall consist of a President, one or more Vice Presidents, a Secretary and a Treasurer. The officers of the Association shall be elected by the Board of Directors of the Association in accordance with the provisions of the By-Laws of the Association. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

ARTICLE X
INDEMNIFICATION

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

ARTICLE XI
DISPOSITION OF ASSETS UPON DISSOLUTION

No Member, Director or officer of the Association or other private individual shall be entitled to share in the distribution of any of the Association assets upon dissolution of the Association. Unless agreed to the contrary by seventy-five percent (75%) of each and every class of membership, upon dissolution of the Association, the assets of the Association shall be granted, conveyed and assigned to an appropriate public body, agency or agencies, utility or utilities or any one or more of them or to any one or more non-profit corporations, associations, trusts or other organizations to be devoted to purposes as nearly as practicable the same as those to which they were required to be devoted by the Association. No disposition of the Association's assets shall be

REAL 646 PAGE 498

effective to divest or diminish any right or title of any Member vested in him under recorded covenants and restrictions applicable to such assets unless made in accordance with the provisions of such covenants and restrictions.

ARTICLE XII

AMENDMENT OF ARTICLES

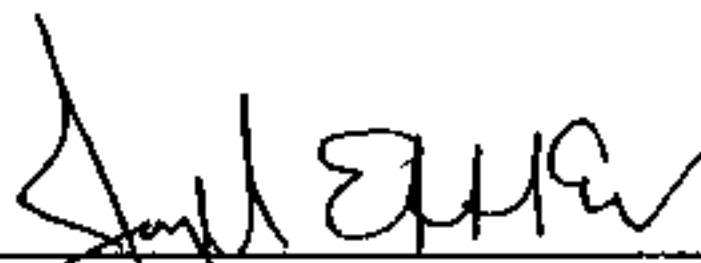


These Articles may be amended by an affirmative vote of two-thirds (2/3) of the Members of the Association entitled to vote.

ARTICLE XIII

BY-LAWS

The Association shall adopt By-Laws governing the conduct of the affairs of the Association. The By-Laws shall be altered, amended, or rescinded as provided in the By-Laws.

IN WITNESS WHEREOF, the subscribing incorporators have hereunto set their hands and seals and caused these Articles of Incorporation to be executed this 2nd day of March, 1987.

 (SEAL)
 (SEAL)
 (SEAL)

BOOK 033 PAGE 252

REAL 646 PAGE 499

STATE OF ALABAMA

COUNTY OF JEFFERSON

Before me, the undersigned Notary Public, in and for said County and State, personally appeared Joseph E. McKay, Roger Yanks and James B. P. [illegible] who are known to me and who, after first being duly sworn, depose under oath and said that the foregoing Articles of Incorporation were prepared under their direction and that they had knowledge of and were informed of the facts stated therein, that said facts are true, and that they executed the same freely and voluntarily and for the purposes stated therein.

Given under my hand and official seal, this the 20th day of March, 1987.

Brenda M. Cook
Notary Public

My Commission expires:

6-17-89

BOOK 033 PAGE 253

THIS INSTRUMENT PREPARED BY:

Randolph H. Lanier
Balch & Bingham
P. O. Box 306
Birmingham, Alabama 35203

REAL 646 PAGE 500

Rev. 3
5-12-87
Balch & Bingham

**BY-LAWS
OF
TRACE CROSSINGS
BUSINESS ASSOCIATION, INC.
(a corporation not for profit)**

BOOK 033 PAGE 254

REAL 646 PAGE 501

**BY-LAWS
OF
TRACE CROSSINGS BUSINESS ASSOCIATION, INC.**

**A Corporation not for Profit
under the Laws of the State of Alabama**

These are the By-Laws of Trace Crossings Business Association, Inc. (hereinafter for convenience called "Association" or "Corporation"), a corporation not for profit, incorporated under the laws of the State of Alabama.

ARTICLE I

ASSOCIATION

SECTION 1.1 Office. The office of the Association shall be at Chace Park South, Building 500, Suite 130, Birmingham, Alabama 35244, or such other place as shall be selected by a majority of the Board of Directors.

1.2 Fiscal Year. The fiscal year of the Association shall be the calendar year.

1.3 Seal. The corporate seal of the Association shall consist of two concentric circles, between the edges of which shall be engraved the words: TRACE CROSSINGS BUSINESS ASSOCIATION, INC., Alabama, Not for Profit, and across the center thereof the words: Corporate Seal, all as shown by an imprint of such seal in the margin of these by-laws. Said seal may be used by causing it or a facsimile thereof to be impressed, affixed, reproduced or otherwise.

ARTICLE II

DEFINITIONS

SECTION 2.1 Association: The Trace Crossings Business Association, Inc., its successors and assigns.

2.2 Association Land: That part of Trace Crossings Property which may at any time hereafter be owned by the Association for so long as the Association or successor thereof may be owner thereof.

2.3 Board: The Board of Directors of the Association.

2.4 By-Laws: The duly enacted By-Laws of the Association.

2.5 Commercial Parcel: Any unit, lot, part or parcel of the Property designed for a commercial or business purpose or use, including apartment projects and residential or business condominiums located on a parcel or parcels which are subjected to the Declaration, regardless of whether a building or structure has or has not been constructed on such lot.

2.6 Declaration: The Declaration of Protective Covenants for Trace Crossings (Business) applicable to Member's Property which shall be recorded in the Probate Records of Jefferson and Shelby Counties, Alabama, as the same may from time to time be supplemented or amended in the manner described therein.

2.7 Deed: Any deed, assignment, lease, or other instrument conveying fee title or a leasehold interest in any part of Trace Crossings Property subjected to the Declaration.

2.8 Developer: Harbert-USR Realty Joint Venture, an Alabama General Partnership, its successors and assigns.

2.9 Member: A person or other entity who is a record owner of Member's Property.

2.10 Member's Property: That portion of Trace Crossings Property which shall have been submitted to the Declaration for the purpose of creating a lien for assessments in favor of the Association. See also, Section 2.12

2.11 Open Spaces or Common Areas: Trace Crossings Property which is conveyed to the Association by the owners or Developers of Trace Crossings or a part thereof.

2.12 Parcel: A Commercial Parcel.

2.13 Property or Subject Property or Member's Property: That part of Trace Crossings Property subjected to the Declaration.

2.14 Resident: Any person or persons occupying or leasing Member's Property.

2.15 Trace Crossings or Trace Crossings Property: The property described as Trace Crossings in the Declaration and other property which may be acquired by Developer and developed as a part of Trace Crossings. That part of Trace Crossings subjected to the Declaration is referred to as "Property", "Subject Property", or "Member's Property".

ARTICLE III

MEMBERSHIP

SECTION 3.1 Membership: The Members of the Association shall consist of all owners of Member's Property and shall be all those persons or other entities as set forth in Article V of the Articles of Incorporation.

3.2 Classes of Membership: The Association shall have two classes of membership, Class A and Class B, each such Class consisting of those Members meeting the applicable qualifications for membership in each respective Class, as set forth in Article V of the Articles of Incorporation.

3.3 Rights and Obligations of Membership. The Members shall have all the rights, privileges, duties and obligations applicable to their respective Class of membership as set forth in the Declaration, the Articles of Incorporation, and elsewhere in these By-Laws.

3.4 Assessments. The rights of membership are subject to the payment of annual assessments and charges. The obligation of such assessments and charges is imposed against each owner of, and is a lien upon, the Member's Property against which such assessment or charge is made, as provided by Article X of the Declaration, which in substance provides as follows:

3.4.1 Continuing Liens: All Member's Property shall be subject to a continuing lien for assessments levied by the Association in accordance with the provisions of the Declaration, the Articles of Incorporation and these By-Laws. The annual assessments and charges together with interest thereon and the costs of collection thereof (including reasonable attorney's fees) as hereinafter provided, shall be a charge on, and shall be a continuing lien upon, the Member's Property against which each such assessment or charge is made. All Member's Property shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged and otherwise encumbered subject to all the terms and provisions of the Declaration, the Articles of Incorporation and these By-Laws applicable to Member's Property, including, but not limited to, the continuing lien herein described.

3.4.2 Personal Obligations of Members: Unless otherwise provided in a deed or other conveyance, each Member, by acceptance of a deed or other conveyance to Member's Property, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association the annual assessments and charges, such assessments to be fixed, established and collected from time to time as hereinafter provided. Each such assessment, together with interest and cost of collection, including reasonable attorney's fees, shall be the personal obligation of the person who is the owner of such Member's Property at the time when the assessment fell due.

3.4.3 Purpose of Assessments: The assessments levied by the Association shall be used exclusively for the purpose of providing any and all of the services and activities as may be to the mutual benefit of the Members, providing fire protection services to Trace Crossings, providing security for Residents and Members and property of Residents and Members; providing for garbage and waste collection and disposal, maintaining, operating and repairing of the Open Spaces, common recreational facilities, the roadway areas within Trace Crossings, any lakes within Trace Crossings, the water and drainage system, waste water pump stations and other areas and structures beneficial or useful to the Member's Property, the payment of taxes and insurance on all property of the Association, and the repair, replacement and additions thereto, and for the cost of labor, insurance, equipment, materials, management and supervision thereof, for other purposes beneficial to the Members as determined by the Association, and for the purpose of carrying out the functions, purposes, responsibilities and duties of the Association. The Association does not assure that such services will be provided and nothing herein shall be construed as an obligation to provide any such services.

3.4.4 Amounts of Annual Assessments: The annual assessment applicable to Parcels shall be set by the Board of Directors of the Association as set forth in the Declaration.

3.4.5 Effect of Non-Payment of Assessment; Remedies of the Association: Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Member personally obligated to pay the same, or foreclose the lien against the Member's Property. No Member may waive or otherwise escape liability for the assessments provided for in the Declaration or in these By-Laws by non-use of the Open Spaces or other areas to which assessments are applied or abandonment of the Member's Property owned by such Member.

3.4.6 Subordination of Lien to Mortgages: The lien of any assessment or charge authorized by Article X of the Declaration or this Article III of these By-Laws with respect to Member's Property is subordinate to the lien of any bona fide mortgage on such Member's Property if, but only if, all assessments and charges levied against such Member's Property falling due on or prior to the date such mortgage is recorded have been paid. The sale or transfer of any Member's Property pursuant to a mortgage foreclosure proceeding, or a proceeding in lieu of foreclosure, or the sale or transfer of such Member's Property pursuant to a sale under power contained in a mortgage on such property shall extinguish the lien for assessments falling due prior to the date of such sale, transfer or foreclosure, but the Association shall have a lien on the proceeds of such sale senior to the equity of redemption of the mortgagor. The foregoing subordination shall not relieve a Member whose Member's Property has been mortgaged of his personal obligation to pay all assessments and charges falling due during the time he is the owner of such property. The Board of Directors may at any time, either before or after the mortgaging of any Member's Property, waive, relinquish or quitclaim in whole or in part the right of the Association to assessments and other charges collectible by the Association with respect to such property coming due during the period while such property is or may be held by a mortgagee or mortgagees pursuant to such sale or transfer.

3.5 Suspension of Membership Rights: The membership rights of any Member, including the right to vote, may be suspended by the Board of Directors (a) for any period during which any assessment or charge owed to the Association by such Member remains unpaid, and (b) for a period not to exceed thirty (30) days for any infraction of the Association's published rules and regulations. Any such suspension shall not affect such Member's obligation to pay assessments coming due during the period of suspension and shall not affect the permanent charge and lien on the Member's Property in favor of the Association.

ARTICLE IV

VOTING RIGHTS

Each class of memberships shall have those voting rights as set forth in Article V of the Articles of Incorporation.

When entitled to vote, each Member shall have one vote for each Parcel owned by such Member. In the event a Commercial Parcel is submitted to a condominium form of ownership, the condominium as a whole shall have one (1) vote, to be cast by a representative designated in writing to the Association by the condominium association.

When more than one (1) person (or other entity) holds an ownership interest or interests in any Parcel, the vote for such Parcel shall be exercised as they among themselves shall determine, but in no event shall more than one (1) person be entitled to cast the vote with respect to any Parcel. In the event of disagreement among such persons (or other entities) and an attempt by more than one to cast the vote of such Parcel, such persons (or other entities) shall not be recognized and the vote with respect to such Parcel shall not be counted.

ARTICLE V

ASSOCIATION POWERS

SECTION 5.1 Additions to Open Spaces: The Association shall accept the conveyance to it of additional Open Spaces by Harbert-USR Realty Joint Venture, an Alabama General Partnership, or by such of its successors and assigns as shall have been specifically granted the right to submit additional property to the Declaration, provided that the property to be so conveyed meets all the requirements for becoming Open Spaces set forth in Article XIV of the Declaration. No approval from any Member of the Association or anyone else is required for Harbert-USR Realty Joint Venture, or its above described successors and assigns, to convey as additional Open Spaces property otherwise meeting the above referenced requirements for becoming additional Open Spaces.

5.2 Other Property Owned by the Association: In addition to acquiring additional Open Spaces in the manner described in Section 5.1 hereof, the Association may, in the discretion of the Board of Directors, accept the conveyance to it by Harbert-USR Realty Joint Venture, or by such of its successors and assigns as shall have been specifically granted the right to submit additional property to the Declaration, of property which shall not be held by the Association as Open Spaces under the terms and provisions of the Declaration, but, rather, which may be used or leased by the Association for any purpose which the Board of Directors shall choose.

5.3 Mortgages: The Association shall have the power to mortgage or otherwise burden or encumber all or part of its properties, provided that any such mortgaging or encumbering shall be authorized by a fifty-five percent (55%) affirmative vote, on a class basis, of the Members entitled to vote.

5.4 Dedication or Transfer of Properties: The Association shall have the power to transfer the ownership of all or part of its properties, by dedication to a public authority or otherwise, provided that any such transfer shall be authorized by fifty-five percent (55%) affirmative vote, on a class basis, of the Members entitled to vote.

ARTICLE VI

BOARD OF DIRECTORS

SECTION 6.1 Selection; Terms of Office: Until December 31, 1999, or at such earlier time as determined by the Class B membership, the Board of Directors shall consist of three (3) Directors, who shall be elected at the times and in the manner set

forth in Section 6.2 hereof. After such time the Board of Directors shall consist of seven (7) Directors, who shall be elected at the time set forth in Section 6.3 and in the manner set forth in Article VII of these By-Laws.

6.2 Election of Directors by the Class B Members. Until December 31, 1999, or earlier as determined by the Board of Directors, as provided in Article VIII of the Articles of Incorporation, the Board of Directors shall consist of three (3) Directors who shall be elected in the following manner:

6.2.1 The initial Board of Directors set forth in Article VIII of the Articles of Incorporation shall hold office until December 31, 2010, or until all the then Class B members shall designate in a writing delivered to the Corporation whichever shall first occur. In the event any named Director ceases to be a Director prior to the time specified above in this Section 6.2.1, his replacement shall be elected by a majority of the total vote of the Class B membership at appropriate annual meeting or special meeting of the Class B Members.

6.2.2 Any Director or Directors elected by the Class B Members may be removed at any time, with or without cause, by vote of seventy-five percent (75%) of the total vote of the Class B membership at any regular or special meeting thereof, and the removed Director may be replaced by a majority of the total vote of the Class B membership at any regular or special meeting thereof.

6.3 Election of Directors by the Class A Members. After December 31, 1999, the number of Directors shall be increased to seven (7) as set forth in Article VIII of the Articles of Incorporation, and the Class A Members shall be entitled to elect three (3) of the new members of the Board of Directors, and the Class B Members shall be entitled to elect one (1) of the new members of the Board of Directors (the Class B Members thus having the right to select a total of four (4) of the members of the Board of Directors). Election of such Directors by the Class A Members shall be in the manner set forth in Article VII and Sections 6.3.1 and 6.3.2 of these By-Laws. As provided in Article VIII of the Articles of Incorporation, after December 31, 2010, and for so long as there are Class B Members, the Class B Members shall be entitled to elect one (1) Director. The election of the Directors by the Class A Members shall occur as follows:

6.3.1 The incumbent Board of Directors elected by the Class B Members shall hold office until the election of their successors by the Class A Members at the annual meeting of the Class A Members to be held for this purpose within sixty (60) days after December 31, 2010, or the termination of the Class B membership, whichever is sooner.

6.3.2 At the annual meeting of the Class A Members first following December 31, 2010, there shall be elected in the manner set forth in Article VII of these By-Laws nine (9) Directors [or eight (8) Directors if there are still any Class B Members], three (3) such Directors being elected for three (3) years, and six (6) such Directors [or five (5) such Directors if there are still any Class B Members] being elected for two (2) years.

The procedure set forth in Section 6.3.1 and 6.3.2 shall be used to elect the three (3) Directors when the total number of Directors is increased to seven (7) as provided in Article V of the Articles of Incorporation.

6.4 Vacancies: Vacancies in the Board of Directors shall be filled by the majority of the remaining Directors, any such appointed Director to hold office until his successor is elected by the Class A Members or the Class B Members, as the case may be, who were entitled to elect the Director, at the next annual meeting of the Members or at any special meeting duly called for that purpose.

ARTICLE VII

ELECTION OF DIRECTORS BY CLASS A MEMBERSHIP

SECTION 7.1 Election of Directors: Elections to the Board of Directors by the Class A membership shall be by written ballot as hereinafter provided. At such elections, the Class A Members or their proxies may cast as many votes as there are vacancies to be filled on the Board of Directors for each Parcel in which they hold any interest required for membership by Article V of the Articles of Incorporation, and such Member shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of Directors to be elected, or by distributing such votes on the same principle among any number of such candidates. The names receiving the largest number of votes shall be elected.

7.2 Nominations Committee. Nominations for a full slate of Directors for election to the Board of Directors by the Class A Members shall be made by the Nominations Committee. The Nominations Committee shall consist of five (5) persons appointed each year by the Board of Directors, two (2) of whom shall be Directors, and three (3) of whom shall be non-directors. Members of the Nominations Committee shall be appointed each year by the Board of Directors at least sixty (60) days before the date on which the election for the members of the Board of Directors is to be held, and the slate of Directors to be nominated by the Nominations Committee shall be nominated at least thirty (30) days before the date of such election. No member of the Nominations Committee shall be eligible for nomination for the Board of Directors by such Committee.

In addition, nominations for the Board of Directors may be made by petition signed by more than twenty (20) Members of the Association, provided that such petitions are filed with the Secretary of the Association at least thirty (30) days before the date of the meeting at which the Directors are to be elected.

7.3 Ballots: All elections to the Board of Directors shall be made on a written ballot which shall: (a) describe the vacancies to be filled; (b) set forth the names of those nominated by the Nominations Committee for such vacancies and those nominated by petition timely filed with the Secretary of the Association; and (c) containing a space for a write-in vote by the Members for each vacancy. Such ballots shall be prepared and mailed by the Secretary of the Association to the Members at least fourteen (14) days in advance of the date set forth therein for a return (which shall be a date not later than the date for the annual meeting or special meeting called for election).

7.4 Voting Procedures: Each Class A Member shall receive one (1) vote for each Parcel with respect to which he is the record owner (subject to the provisions of Article IV hereof). Each Member shall indicate next to the name of each nominee

on the ballot the number of votes he casts for the election of such nominee to the Board of Directors, or shall write in the name of a person not so nominated in the space on the ballot provided for this purpose, together with the number of votes he wishes to cast for said person. All ballots shall be signed by the Member casting it and returned to the Secretary of the Association, who, upon receipt of each ballot shall immediately place it in a safe or other locked place until the day set forth for the annual or other special meeting at which the elections are to be held. On that date, the ballots shall be turned over to an Elections Committee which shall consist of five (5) Members appointed by the Board of Directors. The Elections Committee shall then adopt a procedure which shall:

7.4.1 establish that the number of ballots turned in by each Member corresponds with the number of Parcels owned by such Member or his proxy identified on the ballot; and

7.4.2 establish that the signature of the Member or his proxy on the ballot is genuine; and

7.4.3 if the vote is by proxy, establish that a proxy has been filed with the Secretary as provided in Article XII of these By-Laws and that such proxy is valid.

Said procedure by the Elections Committee shall be taken in such a manner that the vote of any Member or his proxy shall not be disclosed to anyone, including the Elections Committee.

If any ballot is found to contain more than the number of votes which the Member signing such ballot is entitled to cast, all votes on such ballot shall be disqualified and shall not be counted. After the announcement of the results by the Elections Committee, unless a review of the procedure is demanded by thirty-five percent (35%) of the Members casting ballots in the election within ten (10) days after the election, the ballots shall be destroyed.

ARTICLE VIII

POWERS AND DUTIES OF THE BOARD OF DIRECTORS

SECTION 8.1 Powers: The Board of Directors shall have the powers:

8.1.1 To call special meetings of the Members whenever it deems necessary, and it shall call a meeting at any time upon written request of one-fourth (1/4) of the voting membership, as provided in Section 12.2.

8.1.2 To appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any member, officer or Director of the Association in any capacity whatsoever.

8.1.3 To establish, levy, assess and collect the assessments and charges set forth in Article III.

8.1.4 To adopt and publish rules and regulations governing the use of the Open Spaces and the facilities, and the personal conduct of the Members and their guests thereon.

8.1.5 To exercise for the Association all powers, duties and authorities vested in or delegated to the Association, except those reserved to Members in the Declaration, or in the Articles of Incorporation, or elsewhere in these By-Laws.

8.1.6 To appoint such committees as it deems in the best interests of the Association to carry out the functions and duties of the Board of Directors.

8.2 Director Absences: In the event that any member of the Board of Directors of the Association shall be absent from three (3) consecutive regular meetings of the Board of Directors, the Board may by action taken at the meeting during which said third absence occurs, declare the office of said absent Director to be vacant, and the provisions relating to the filling of a vacancy of the Board of Directors as set forth in Section 6.4 shall become operative.

8.3 Duties: It shall be the duty of the Board of Directors:

8.3.1 To cause to be kept a complete record of all its acts and corporate affairs and to present the statement thereof to the voting Members at the annual meeting of the voting Members or at any special meeting when such is requested in writing by one-fourth (1/4) of the total voting membership, as provided in Section 12.2.

8.3.2 To supervise all officers, agents and employees of the Association, and to insure that their duties are properly performed.

8.3.3 As more fully provided in Article IX of the Declaration and Article III of these By-Laws, to fix the amount of the assessment against each Parcel owned by a Member at least thirty (30) days in advance of the date of any payment of such assessment is due.

8.3.4 To prepare a roster of the Parcels and assessments applicable thereto which shall be kept in the offices of the Association and which shall be open to inspection by any Member thereof, and, to send written notice of each assessment to every Member subject thereto.

8.3.5 To issue, or cause an appropriate officer to issue upon demand by any person, a certificate setting forth whether any assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

8.3.6 To obtain and maintain a liability insurance policy or policies for the protection of the Association covering the Open Spaces and covering such risks and with such deductible amounts as the Board of Directors shall determine.

ARTICLE IX

DIRECTORS MEETING

SECTION 9.1 Time and Place: Meetings of the Board of Directors may be held at any place within or without the State of Alabama. The annual meeting of the Board of Directors shall be held immediately following the close of the annual meeting of the Members and at the place thereof, or the Board of Directors may hold such annual meeting at such place and time as shall be fixed by the consent in writing of a majority of the Directors. Regular meetings of the Board of Directors may be held at such time and place (within or without the State of Alabama) as shall from time to time be determined by the Board of Directors.

9.2 Notice: Notice of regular meetings of the Board of Directors is hereby dispensed with. If the day for a regular meeting shall fall upon a holiday, the meeting shall be held at the same hour on the first day following which is not a holiday, and no notice thereof need to be given.

9.3 Special Meetings: Special meetings of the Board of Directors shall be held when called by any officer of the Association or by any two (2) Directors after not less than three (3) days' notice to each Director.

9.4 Waivers, Consents and Approvals: The transaction of any business at any meeting of the Board of Directors, however called and noticed, or wherever held, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum is present and, if either before or after the meeting, each of the Directors not present signs a written waiver of notice, or a consent to the holding of such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and shall be made a part of the minutes of the meeting.

9.5 Quorum: The majority of the Board of Directors shall constitute a quorum thereof.

9.6 Adjourned Meetings: If at any meeting of the Board there is less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At any adjourned meeting any business that might have been transacted at the meeting as originally called, may be transacted without further notice.

ARTICLE X

OFFICERS

SECTION 10.1 Officers: The officers shall be a President, a Vice President, a Secretary, and a Treasurer. The President and the Vice President shall be members of the Board of Directors.

10.2 Majority Vote: The officers shall be chosen by majority vote of the Directors.

BOOK 033 PAGE 264

10.3 Term: All officers shall hold office during the pleasure of the Board of Directors.

10.4 President: The President shall preside at all meetings of the Board of Directors, and shall see that orders and resolutions of the Board of Directors are carried out, and sign all notes, checks, leases, mortgages, deeds and all other written instruments as may be incidental to the orders and resolutions of the Board of Directors.

10.5 Vice President: The Vice President shall perform all the duties of the President in his absence.

10.6 Secretary: The Secretary shall be "ex-officio" the Secretary of the Board of Directors, and shall record the vote and keep the minutes of all proceedings in a book to be kept for such purpose. He shall keep the records of the Association. He shall record in a book kept for such purpose the names of all Members of the Association together with their addresses as registered by such Members. The Secretary shall give notice of meetings as required, and shall receive and file proxies of Members as provided in Article XIII hereof.

10.7 Treasurer: The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; provided, however, that a resolution of the Board of Directors shall not be necessary for disbursements made in the ordinary course of business conducted within the limits of a budget adopted by the Board. The Treasurer shall sign all checks and notes of the Association, provided that such checks and notes shall also be signed by the President or the Vice President in his absence.

10.8 Bookkeeping: The Treasurer shall keep proper books of account and cause an annual audit of the Association books to be made by a certified public accountant at the completion of each fiscal year. The Treasurer shall prepare the annual budgets and an annual balance sheet statement and the budget and balance sheet statement shall be presented to the membership at its regular annual meeting.

ARTICLE XI

COMMITTEES

SECTION 11.1 Standing Committees: Until the earlier of December 31, 1999, or the time at which the Class B membership terminates, there shall be no requirement of standing committees of the Association. From and after the first annual meeting of the Class A Members, the standing committees of the Association shall be:

The Recreation Committee
The Maintenance Committee
The Publicity Committee
The Audit Committee

Unless otherwise provided herein, each committee shall consist of a Chairman, and two (2) or more members and shall include a member of the Board of Directors. The committees shall be appointed by the Board of Directors immediately after each annual

REAL 646-512

meeting to serve until the close of the next annual meeting. The Board of Directors may appoint such other committees as it is deemed desirable.

11.2 Recreation Committee: The Recreation Committee shall advise the Board of Directors on all matters pertaining to the recreational programs and activities of the Association and shall perform such other functions as the Board, in its discretion, shall determine.

11.3 Maintenance Committee: The Maintenance Committee shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvement of the Open Spaces and shall perform such other functions as the Board shall, in its discretion, determine.

11.4 Publicity Committee: The Publicity Committee shall inform the Members of all activities and functions of the Association and shall, after consulting with the Board of Directors, make such public releases and announcements as are in the best interests of the Association.

11.5 Audit Committee: The Audit Committee shall supervise the annual audit of the Association books and approve the annual budget and balance sheet statement to be presented to the membership at its regular annual meeting as provided in Section 10.8 hereof. The Treasurer shall be an "ex-officio" member of this Committee.

11.6 Subcommittees: Each Committee shall have the power to appoint a subcommittee from among its membership and may delegate to any such subcommittee any of its powers, duties and functions set forth in this Article XI, and as delegated by the Board of Directors.

11.7 Review of Complaints: It shall be the duty of each committee to receive complaints from Members on any matter involving Association functions, duties, and activities in its field of responsibility. It shall dispose of such complaints as it deems appropriate or refer them to such other committee, Director or officer of the Association as is further concerned with the matter presented.

ARTICLE XII

MEETINGS OF MEMBERS

SECTION 12.1 Annual Meeting: Until the earlier of December 31, 2010, or the time at which the Class B membership terminates, as provided in Article V of the Articles of Incorporation, the regular annual meeting of the Class B members shall be on the first Friday in May of each year, or within two (2) weeks thereafter, at a time and place to be agreed upon by the Class B members.

Until the earlier of December 31, 1999, or the time at which the Class B membership terminates, there shall be no annual or regular meeting of the Class A membership.

The first annual meeting of the Class A Members shall be held within sixty (60) days after the earlier of December 31, 1999, or the termination of the Class B membership. Thereafter, the regular annual meeting of the members shall be held at 8:00

o'clock P.M. on the first Friday in March of each year (beginning the year in which said meeting date is more than twelve months following the initial meeting), provided, however, if that day is a legal holiday, the meeting shall be held at the same hour on the following Friday. The place of the annual meetings shall be determined by the Board of Directors.

12.2 Special Meetings: Special meetings of either class of membership for any purpose may be called at any time by the President, the Vice President, the Secretary or the Treasurer, or by any two (2) or more members of the Board of Directors. In addition, special meetings of the voting membership must be called upon the written request of the Members who have a right to vote one-fourth (1/4) of the total votes entitled to be cast under the provisions of Article V of the Articles of Incorporation at the time such written request is made.

12.3 Notice: Notice of any meetings of a class of membership shall be given to the Members of that class by the Secretary. Notice may be given to the Members either personally, or by sending a copy of the notice through the mail, postage thereon fully prepaid, to his address appearing on the books of the association. Each Member shall register his address with the Secretary, and notices of meetings shall be mailed to him at such address. Notice of any regular or special meeting shall be mailed at least six (6) days in advance of the meeting, and shall set forth in general the nature of the business to be transacted; provided, however, that if the business of any meeting shall involve an election governed by Article VII, notice of such meeting shall be given or sent as therein provided.

12.4 Quorum: The presence at the meetings of Members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the vote of the class of membership so meeting shall constitute a quorum for any actions governed by these By-Laws unless it is provided otherwise in the Declaration, or the Articles of Incorporation, or elsewhere in these By-Laws.

ARTICLE XIII

PROXIES

SECTION 13.1 Form of Vote: At all meetings of Members, each Member entitled to vote may vote in person or by proxy.

13.2 Proxies: All proxies shall be in writing filed with the Secretary of the Association. No proxy shall extend beyond a period of eleven (11) months, and every proxy shall automatically cease upon the sale by the Member of his Parcel or other interest in the Member's Property.

ARTICLE XIV

INSPECTION OF BOOKS AND PAPERS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to the inspection of any Member.

REAL 646 PAGE 514

ARTICLE XV

PARLIAMENTARY RULE

Roberts Rules of Order (latest edition) shall govern the conduct of the Association proceedings when not in conflict with the Declaration or the Articles of Incorporation.

ARTICLE XVI

AMENDMENTS

Until the earlier of December 31, 2010, or the time at which the Class B membership terminates, at which time the Class A membership is entitled to full voting privileges, as provided for in Article V of the Articles of Incorporation, these By-Laws may be amended upon a majority vote of the Board of Directors in any respect. After such time as the Class A members shall be entitled to full voting privileges, these By-Laws may be amended in any respect upon recommendation of the Board of Directors and subsequent approval at a regular or special meetings of the Members by a sixty percent (60%) vote of the total vote of all the then existing classes of membership, present in person or by proxy; provided, however, that those provisions of these By-Laws which are governed by the Articles of Incorporation may not be amended except as provided therein or except as provided by applicable law; and provided further, that any matter stated herein to be or which is in fact governed by the Declaration may not be amended except as provided in the Declaration.

ARTICLE XVII

CONFLICTS

In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

IN WITNESS WHEREOF, we being all of the Directors of the Trace Crossings Business Association, Inc., have heretofore set our hands this 20 day of MARCH, 1987.

STATE OF ALA. JEFFERSON CO.
BESSEMER DIV. I CERTIFY
THIS INSTRUMENT FILED ON

MAR 30 3 58 PM '87

Recorded & indexed
Jed (as per above) paid for this instrument
O. H. Lawrence
Judge of Probate

State Of Alabama
Jefferson County

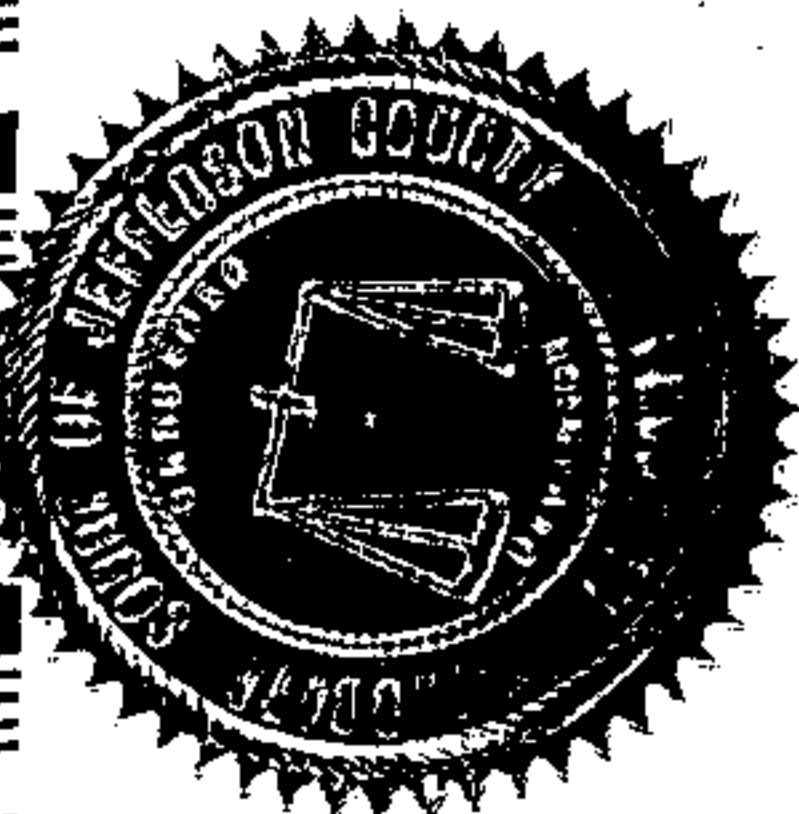
CERTIFICATE OF INCORPORATION

OF
TRACE CROSSINGS BUSINESS ASSOCIATION, INC.

The undersigned, as Judge of Probate of Jefferson County, State of Alabama, hereby certifies that duplicate originals of Articles of Incorporation for the incorporation of Trace Crossings Business Association, Inc., duly signed pursuant to the provision so Section 32 of the Alabama Nonprofit Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY the undersigned, as such Judge of Probate, and by virtue of the authority vested in him by law, hereby issues this Certificate of Incorporation of Trace Crossings Business Association, Inc., and attaches hereto a duplicate original of the Articles of Incorporation.

GIVEN Under My Hand and Official Seal on this the 30th day of
March, 19 87



STATE OF ALABAMA
I CERTIFY THAT
INSTRUMENT NO. 17 Judge of Probate

1987 APR 29 AM 8:17

Thomas C. [Signature]
JUDGE OF PROBATE

BOOK 033 PAGE 269

