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Shelby Cnty Judge of Probate, AL  
11/04/2004 08:19:00 FILED/CERTIFIED

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## DECLARATION OF CONDOMINIUM FOR NARROWS CENTRE

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THIS DECLARATION, made this 27<sup>th</sup> day of October, 2004, by KEN UNDERWOOD PROPERTIES, LLC hereinafter, the "Developer"), pursuant to the Alabama Uniform Condominium Act of 1991, Title 35, Chapter 8A (the "Act") for the purpose of forming a condominium and establishing certain easements, covenants and restrictions to run with the land:

### WITNESSETH:

WHEREAS, Developer is the owner in fee simple of certain real estate situated in Shelby County, Alabama, legally described in Exhibit A as containing five (5) units, parking areas, and certain other improvements in accordance with the Map of Narrows Centre, prepared by Carr & Associates, Inc. on June 2004, and recorded at Map Book 34, Page 33 in the Office of the Judge of Probate of Shelby County, Alabama ;

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

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

## ARTICLE I

### DEFINITIONS

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

(a) "Act" shall mean the Alabama Uniform Condominium Act of 1991, Code of Alabama, 1991 §§ 35-8A-1 et seq., and as the same may be amended from time to time.

(b) "Association" shall mean Narrows Centre Condominium Owners Association, an unincorporated association, of which all Owners shall be members and which association shall administer the operation and management of the Condominium Property.

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

(d) "By-Laws" shall mean the set of By-Laws, identified as Exhibit C, recorded simultaneously with this Declaration, providing for the self-government of the Condominium Property by the Association in accordance with § 35-8A-10 of the Act, and such amendments thereto as may be recorded from time to time pursuant to the provisions of the Act.

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

- i. The Land;
- ii. The foundations, bearing walls, perimeter walls, structural slabs, and columns;
- iii. The roofs, attics, halls, sidewalks, mechanical equipment and storage areas and entrances and exits or communication ways;
- iv. The compartments or installations of central services such as central air conditioning and heating, power, light, electricity, telephone, gas, cold and hot water, plumbing, reservoirs, water tanks and pumps, sewer lines, septic field, flues, incinerators, and the like, and all similar devices and installations existing for common use;
- v. Greens, gardens, service streets, parking areas and ingress and egress easements;
- vi. All easements, rights or appurtenances affecting or relating to the use of the Condominium Property unless specifically included in any Unit; and

vii. All other elements desirable or rationally of common use or necessary to the existence, upkeep and safety of the Condominium Property.

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

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

(h) “Condominium Documents” shall mean the Declaration and all Exhibits thereto and the By-Laws, as the same shall be amended from time to time.

(i) “Declaration of Condominium” or “Declaration” shall mean this instrument as it may, from time to time, be amended.

(j) “Developer” shall mean Ken Underwood Properties, LLC, their respective heirs, executors, administrators and any assignee, other than an Owner, who shall receive by assignment from said persons all, or a portion of their rights hereunder as such Developer, by an instrument expressly assigning such rights as Developer to such assignee.

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

(l) “Mortgage” shall mean a first lien mortgage on one or more Units.

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

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

(o) “Plan” shall mean the Plan showing each Unit of the Condominium Property attached hereto as Exhibit A and made a part hereof for all purposes, as such Plan may from time to time be amended.

(p) “Private Elements” shall mean a part or parts of the Condominium Property as set forth in the Plan intended for the exclusive ownership or possession by an Owner. Each Private Element shall consist of the volumes or cubicles of space which lie between the lower, upper and lateral or perimetrical boundaries described as follows:

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

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

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

(ii) Perimetrical Boundaries: The perimetrical boundaries shall be the vertical planes of the exterior surfaces of the exterior windows, glass doors and entry doors, and the unfinished interior surfaces of the boundary walls, excluding paint, wallpaper and light coverings, extended to their planer intersections with each other and with the upper and lower boundaries.

Each Private Element shall include all non-structural interior partition walls located within the boundaries of the Private Element excepting such part as may comprise part of the Common Elements, the decorated surfaces of all boundary walls, ceilings, and floors, including wallpaper, paint, interior brick surface, lathe, wallboard, plaster, carpeting, flooring, and other finishing materials; all immediately visible fixtures, appliances, cabinets, and water and sewage pipes located within the boundaries of the Private Element and serving only the Private Element; and the power, gas, water, heating and air conditioning service to the Private Element, including the individual compressor even though such equipment may be located outside the boundaries of the Private Element, provided that no pipes, wires, conduits, ducts, flues, shafts and other facilities situated within such Private Element and forming a part of any system serving one or more other Private Elements of the Common Elements shall be deemed to be a part of such Private Element, and provided further that no wall or column providing structural support and located within the boundaries of the Private Element shall be deemed part of the Private Element.

(q) “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.

(r) “Rules and Regulations” shall mean those Rules and Regulations adopted from time to time by the Board of Directors of the Association that are deemed necessary for the enjoyment of the Condominium Property, provided they are not in conflict with the Act or the Condominium Documents.

(s) “Unit” or Condominium Unit shall mean the Private Elements as shown on the Plan together with the undivided interest in the Common Elements, assigned to each Unit as herein provided.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

2.01. Description of Improvements and Identification of Units. The Condominium Property consists of a total of five (5) Units and Common Elements. A plot plan of the Land and a graphic description of the improvements in which the Units are located identifying each Unit by a letter all in sufficient detail to identify the Common elements and Private Elements of each Unit and their relative locations and approximate dimensions are set forth in the Plan attached hereto as Exhibit A.

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

(a) Parking Easement. Each Owner shall in addition to owning a fee simple interest in his Unit have a nonexclusive easement for the use of the parking area designated on the Plan. The Association may grant to an Owner an exclusive easement or license for the use of one or more parking spaces, and the aforesaid nonexclusive parking easements shall be subject and subordinate to the exclusive parking rights granted by the Association. Any such exclusive or nonexclusive easement shall be for the benefit of the Owners and their licensees, invitees and lessees and shall not entitle the Owner to (i) construct any garage, carport or other structure upon the parking area, or (ii) alter or remove any existing structure upon the parking area.

(b) Utility Easements. Utility easements are reserved throughout the whole of the Property, including Units, as may be required for utility services in order to adequately serve the condominium Units; provided, however, such easements through a Unit shall be only as the building shall be constructed, unless changes thereto are approved in writing by the Owners of the affected Units.

(c) Air Conditioning and Other Equipment. There may be appurtenant to the Units air conditioning compressors and other equipment which may be located in the Common elements appurtenant to such Units. An easement is hereby reserved in favor of each such Unit for the purpose of placement, maintenance, repair and replacement of the said air conditioning compressors and other equipment by Developer and the Owners of the appurtenant Unit.

(d) Easements for Ingress and Egress. The Common Elements shall be, and the same are hereby declared to be subject to perpetual non-exclusive easements of way over all roads, parking lots, walkways, and sidewalks in favor of all Owners for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners, subject to any exclusive easements granted under the authority of this Declaration and restrictions in the condominium documents.

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

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

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

2.03. Ownership of Common Elements. Each Owner shall own an undivided interest in the Common Elements with all other Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as herein provided without hindering or encroaching upon the lawful

rights of the other Owners, which rights shall be appurtenant to and run along with the Unit. The extent or amount of such ownership shall be expressed by a percentage relating to the square footage of each Unit and shall remain constant unless changed by the unanimous approval of all Owners and Mortgagees. The percentage ownership in the Common Elements relating to each Unit is as set forth on Exhibit B attached hereto.

### ARTICLE III

#### ORGANIZATION AND MANAGEMENT

**3.01. Management of the Condominium Property.** Operation and administration of the Condominium Property shall be performed by Narrows Centre Condominium Owners Association. The powers and duties of the Association shall include those set forth in the Act, this Declaration, and the By-Laws. In addition, the Association shall have the power and authority specifically:

(a) To purchase one or more Units of the Condominium Property and otherwise acquire, hold, lease, mortgage and convey the same;

(b) To borrow funds to pay for the costs of operation of the Condominium Property and for such other expenditures as may be authorized by the provisions of this Declaration;

(c) To grant easements or licenses for the use of the Common Elements in a manner not inconsistent with the rights of Owners;

(d) To enter into agreements by which its powers and responsibilities or some of them may be exercised or performed by some other person or persons.

**3.02. Members.** The members of the Association shall initially consist of the Developer as Owner of the Units. Thereafter, change of membership in the Association shall be established by recording in the public records of Shelby County, Alabama, the deed or other instrument establishing record title to a Unit of the Condominium Property, and the delivery to the Association of a certified copy of such instrument, the Owner designated by such instrument thereby becoming a record Owner and a member of the Association. Membership of the prior Owner shall thereby be terminated. All present and future Owners, tenants and occupants of the Unit shall be subject to and shall comply with the provisions of the Declaration, the By-Laws and the Rules and Regulations, as the same may be amended from time to time. The vote for a Unit shall be cast by the record owner thereof or the duly authorized proxy of the record Owner in the manner provided in the By-laws. Each Unit Owner is entitled to one vote for each percentage point of ownership in the Common Elements that he owns.

**3.03. By-Laws.** The By-Laws of the Association shall be in the form attached as Exhibit C to this Declaration.

## ARTICLE IV

### ASSESSMENTS

4.01. Liability, Lien and Enforcement. The Association is given the authority to administer the operation and the management of the Condominium Property, it being recognized that the delegation of such duties to one entity is in the best interest of the owners of all Units. To provide the funds necessary for such proper operation, the Association is hereby granted the right to make, levy, and collect 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.

#### 4.02. Assessments.

(a) Assessments for the payment of Common Expenses shall be levied against the Owners of all Units, and unless the Declaration otherwise provides, each Owner of a Unit shall bear the same percentage share of such assessments as the percentage share for the undivided interest in the Common Elements appurtenant to his Unit. The assessments for Common Expenses shall be payable at such times as may be determined by the Board of Directors of the Association.

(b) The Association may, if permitted by the Declaration, assess the Owners of Units for the repair and maintenance of various components of the Common Elements and reserves therefor based on the usage of the component of the Common Elements. Such assessments shall not be included in the assessment for Common Expenses, but shall be payable in such manner and at such times as may be determined by the Board of Directors of the Association.

4.03. Annual Budget. Within thirty (30) days prior to the beginning of each calendar year, the Board of Directors of the Association shall establish an annual budget for such calendar year, and such budget shall project the amount of funds which may be required in the forthcoming year for the proper operation, management and maintenance of the Condominium Property in accordance with the Act and this Declaration. Upon adoption of such annual budget by the Board of Directors of the Association, copies of said budget shall be delivered to each Unit Owner. Failure to deliver a copy of said budget to each Unit Owner shall not affect the liability of the Unit Owner for any assessment. Should the Board of Directors at any time determine in the sole discretion of said Board of Directors that the assessments levied are or may prove to be insufficient for any reason including emergencies and non-payment of any Owner's assessment, the Board of Directors shall have authority to levy such additional assessments as it shall deem necessary in accordance with the applicable provisions of the Condominium Documents.

4.04. Omission of Assessment. The omission by the Association, before the expiration of any year, to fix the assessments for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed. Amendments to this Article IV shall be effective only upon the unanimous written consent of the Owners and their Mortgagees.

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

4.06. Payment of Common Expenses by Unit Owners. All Owners shall be obligated to pay the assessments, if any, levied against their Units by the Board of Directors pursuant to the terms of this Article IV. No Unit Owner may exempt himself from liability for his contribution toward Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of his Unit. No Unit Owner shall be liable for the payment of any part of the Common Expenses assessed against his Unit subsequent to a sale or other conveyance by him of such Unit. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter up to the time of conveyance without prejudice to the purchaser's right to recover from the selling Unit Owner the amounts paid by the purchaser therefor. Whenever any Unit may be sold or mortgaged by the Owner thereof, which sale shall be concluded only upon compliance with the other provisions of this Declaration, the association upon written request of the Owner or purchaser of such Unit, shall furnish to the purchaser or 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. Any purchaser or proposed Mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction and the Association shall be bound by such statement. In the event that a Unit is to be sold or mortgaged when any assessment is outstanding against the Owner of such Unit and such assessment due the Association is in default, whether or not a claim of lien has been recorded by the Association, the proceeds of purchase or mortgage proceeds shall first be applied by purchaser or Mortgagee to the payment of any delinquent assessment or installment due the Association before application of the payment to the Owner.

4.07. Default in Payment of Assessments.

(a) The payment of any assessment or installment thereof due the Association shall be in default if such assessment or any installment thereof is not paid to the Association on or before the due date for such payment. When in default, the delinquent assessment or delinquent installment due the Association shall bear interest at the maximum legal rate on judgments until such delinquent assessment or installment and all interest due thereon has been paid in full. The Association shall be entitled to a lien against Units for delinquent assessments.

Said lien shall secure and does secure the monies due for all assessments now or hereafter 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 assessments owing the Association. Said lien shall also secure all costs and expenses, including reasonable attorneys fees incurred by the Association in enforcing the lien upon said Unit and its appurtenant undivided interest in the Common Elements, if any. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages in the State of Alabama. The lien granted to the Association shall further secure such advances for taxes and any 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 on any such advances made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit or who may be given or acquire a mortgage, lien or other encumbrance thereon are hereby placed on notice of the lien rights granted to the Association and shall acquire such interest in any Unit expressly subject to the lien.

(b) The lien herein granted to the Association shall be effective from and after the time of recording in the Probate Office of Shelby County, Alabama, a claim of lien stating a description of the Unit encumbered thereby, the name of the record Owner, the amount due, the date when due, and the lien shall continue in effect until all sums secured by said lien, as herein provided, shall have been fully paid. Such claims of lien shall include only assessments which are due and payable when the claim of lien is recorded, plus interest, costs, reasonable attorneys fees, advance to pay taxes and prior encumbrances and interest thereon, all as above provided. Such claims of lien shall be signed and verified by an officer or agent of the Association. Upon full payment of all sums secured by such claim of lien, the same shall be satisfied of record at the Unit Owner's cost. The claim of lien filed by the Association shall be subordinate to the lien of any Mortgage or any other lien recorded prior to the time of recording of the Association's claim of lien. The Association's claim of lien for collection of such portion of any tax or special assessment shall specifically designate that the same secures an assessment levied pursuant to the provisions of Article IV of this Declaration.

(c) Whenever the Mortgagee of a Mortgage of record, or other purchaser of a Condominium Unit, obtains title to the Condominium Unit as a result of the foreclosure, such acquirer of title and his successors or assigns shall not be liable for the share of assessments by the Association pertaining to the Condominium Unit or chargeable to the former Owner of the Unit which became due prior to the acquisition of title as a result of the foreclosure. Such unpaid share of the assessments shall be deemed Common Expenses collectable from all the Owners, in the proportionate share of their ownership of the Common Elements, including such acquirer and his successors and assigns.

**4.08. Election of Remedies.** Institution of a suit at law to collect payment of any delinquent assessments shall not be deemed to be an election by the Association which shall prevent it thereafter from seeking enforcement of the collection by foreclosure of any sums remaining owing to it. Nor shall proceeding by foreclosure to effect such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining

owing to the Association. The Association shall be entitled to bid at any sale held in connection with the foreclosure of the assessment lien and may apply as a cash credit against its bid all sums secured by the lien enforced.

## ARTICLE V

### MAINTENANCE AND OPERATION OF THE CONDOMINIUM PROPERTY

**5.01. The Association's Obligation to Repair.** The Association acting through the Board of Directors shall be responsible for the maintenance, repair and replacement of the following, the cost of which shall be charged to the owners as an assessment against their Units as provided in Article IV hereof:

(i) The Common Elements which by its definition excludes the surfaces of all interior walls, floors, ceilings, entrance doors, and windows of a Unit; and

(ii) Incidental damage caused to a Unit by such work done by the Association.

This section 5.01 shall not relieve a Unit Owner of liability for damage to the Common Elements caused by the Unit Owner, his guests or invitees or as a consequence of the negligence or willful misconduct of such Unit Owner, his guests or invitees. The cost of repair for any damage so caused by the Unit Owner, his guests or invitees shall be an assessment against the Unit Owner responsible therefor.

**5.02. Each Owner's Obligation to Repair.**

(a) Except for those portions of the Condominium Property which the Association is required to maintain and repair, each owner, shall, at such Owner's expense, maintain his Unit, and the exterior and interior thereof, in good tenantable condition and repair, and shall repair, maintain and replace, if necessary, the following:

(i) The fixtures and equipment in his Unit, including all appliances within the Unit; drains, plumbing fixtures and connections, sinks, and plumbing within the Unit; electrical panels, wiring, outlets and electric fixtures within the Unit; interior doors, windows, screening and glass; all the exterior doors, except the painting of the exterior faces of the exterior doors which shall be the responsibility of the Association; and all wall coverings and flooring within a Unit.

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

(b) Each Unit Owner agrees as follows:

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

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

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

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

(v) Subject to the provisions of subparagraph (iii), not to make alteration, addition, improvement, decoration, repair, replacement or change to the Common Elements, and the Unit Owner shall be liable for all damages to another Unit and to the Common Elements caused by any contractor employed by such Unit Owner or by the subcontractors or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise; and

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

(c) The Association shall be obligated to answer any request by a Unit Owner for any required approval of a proposed addition, alteration or improvement (by painting or otherwise) by such Unit Owner within forty-five (45) days after such request, but its failure to do so within the stipulated time shall not constitute a consent of the Association to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any Unit shall be executed by the Association, without, however, it incurring any liability on the part of the Board of Directors or any of them or the Association to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim of injury to a person or damage to property arising therefrom. The provisions of this section shall not apply to Units owned by the Developer until a deed for such Unit has been delivered to the purchaser thereof.

5.03 Alterations, Additions, and Improvements by the Association. Except in the case of loss or damage to the Common Elements as contemplated by Article VIII of the Declaration, the Association shall not make any material structural alterations, capital additions or capital improvements to the Common Elements (other than for the purposed of replacing, restoring or rehabilitating portions of the Common Elements which is in accordance with the Declaration and which do not require expenditures of more than \$5,000 exclusive of any funds applied from the reserves maintained by the Association) unless the same is authorized by the Board of Directors of the Association and in the case of Common Elements, ratified by the affirmative vote of the voting members casting not less than 75% of the total votes fo the members of the Association present at any regular or special meeting of the Unit Owners called for that purpose at which a quorum is present and approved by a majority of the Mortgagees (based on one vote for each Mortgage). The cost of the foregoing shall be assessed against the Owners of Units in accordance with Article IV hereof except as otherwise provided in this Section 5.03. Where any alterations or additions as aforesaid are exclusively or substantially exclusively for the benefit of the Unit Owners requesting the same, then the cost of such alterations or additions shall be assessed against and collected solely form the Unit Owners exclusively, or substantially exclusively, benefiting therefrom , and the assessment shall be levied in such proportions as may be determined to be fair and equitable by the Board of Directors of the Association. Where such alterations or additions exclusively, or substantially exclusively, benefit Unit Owners requesting the same, said alterations and additions shall be made only when authorized by the Board of Directors and ratified by not less than 75% of the total votes of the Unit Owners exclusively, or substantially exclusively, benefitting therefrom and a majority of the Mortgagees having Mortgages on said Units (base on one vote for each Mortgage). 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 necessitated and in the best interest of the Unit Owners.

5.04. Utilities. Each Unit Owner shall pay all charges for utilities consumed or used in his Unit based upon a percentage by square footage. The utilities provided to the Common Elements shall either be included in the meter of the Owners of the Units and billed directly to them or shall be separately metered and paid by the Association as a Common Expense.

## ARTICLE VI

### RESTRICTIONS ON USE OF UNITS AND COMMON ELEMENTS

6.01. Rules and Regulations of the Association. The Association is authorized to promulgate, amend and enforce Rules and Regulations concerning the operation and use of the Condominium Property; provided that such Rules and Regulations are not contrary to or inconsistent with the Act and the Condominium Documents. A copy of the Rules and Regulations shall be furnished by the Board of Directors to each Unit Owner prior to the time they become effective. All present and future Unit Owners, tenants, and occupants of the Units and any person who uses any part of the Condominium Property in any manner, are subject to,

and shall comply with the provisions of the Condominium Documents and the Rules and Regulations. The acquisition, rental or occupancy of a Unit or the use of any part of the Condominium Property by any one person shall constitute his agreement to be subject to and bound by the provisions of the Condominium Documents and the Rules and Regulations, and such provisions shall be deemed to be enforceable as equitable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated in full in each and every deed of conveyance or lease thereof.

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

- (a) Each Unit is hereby restricted to any use allowed by the Association.
- (b) There shall be no obstruction of the Common Elements nor shall anything be kept or stored in the Common Elements nor shall anything be altered or constructed on or planted in or moved from the Common Elements, without the written consent of the Association.
- (c) No immoral, improper, offensive or unlawful use shall be made of any Unit or of Common Elements, or any part thereof, and all laws, 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 his Unit or in the Common Elements which will result in any increase of fire 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.
- (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 consent of the Board of Directors of the Association. All signs shall be maintained in good repair so as to be clear and legible.
- (f) No noxious or offensive activities shall be carried on, nor shall any sound speakers or other sound producing devices be used, nor shall anything be done, in any part of the Condominium Property which in the judgment of the Association, may be or become an unreasonable annoyance or nuisance to the other Owners.
- (g) The Common Elements shall be kept clear of rubbish, debris and other unsightly materials.

**6.03. Limitation of Liability.** The Association shall not be liable for any failure of water supply, fire protection or other service to be obtained by the Association or paid for out of the Common Expenses 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 or from any wire, pipe, drain, conduit, or equipment. The Association shall not be liable to the owner of any Unit for loss or damage, by theft or otherwise,

of articles which may be stored upon any of the Common Elements. No diminution or abatement of the assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements or to any Unit, or from any action taken by the Association to comply with any law or ordinance or with the order or directive of any municipal or other governmental or judicial authority or for the dispossession of the Unit Owner by reason of fire or other casualty.

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

**6.05. Failure of the Association to Insist on Strict Performance; No Waiver.** 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 Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors of the Association.

## **ARTICLE VII**

### **RIGHTS OF MORTGAGEES**

**7.01. Notification of Mortgagees Required.** Any Mortgagee shall have the right to be given written notification by the Association of (a) any sixty (60) day default by the owner of the Unit covered by the Mortgage in the payment of assessments or in any other provision of the Condominium Documents of the Unit covered by the Mortgage; (b) any loss to or taking of the Common Elements if such loss or taking exceeds \$10,000; (c) any condemnation of all or a portion of the Condominium Property; and (d) any proposed action that requires the consent of a specified percentage of Mortgagees.

7.02. Right of Inspection. Mortgagees shall have the right to examine the books and records of the Association or the Condominium Property and to receive annual reports and other financial data.

7.03. 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 under Section 4.07 hereof, and the right to foreclose the same is and shall be subject and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by, any Mortgage upon such interest made in good faith and for value and recorded prior to the creation of the lien hereunder, provided that after the foreclosure of any such mortgage there may be a lien created pursuant to Section 4.07 hereof on the interest of the purchaser as an owner after the date of such foreclosure sale, said lien, of any kind shall be claimed, and shall have the same effect and be enforced in the same manner provided herein.

(b) No provision of this Declaration, the Articles, the By-Laws or the Rules and Regulations shall be construed to grant to any Unit Owner, or to any other party and 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, the Common Elements or any portion thereof.

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

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

7.04. Request for Protection by Mortgagees. Whenever the holder of any Mortgage desires the benefit of the provisions of this Article VII to be applicable to it, it shall serve written notice of such fact upon the Association, by registered or certified mail, addressed to the Association, and actually mailed to its address stated herein, identifying the Unit upon which it holds a Mortgage or identifying any Units owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it. Said notice shall designate the place to which the notices are to be given by the Association to such Mortgagee.

## ARTICLE VIII

### CASUALTY LOSS AND INSURANCE

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

(a) The Owner of each Unit shall, at his expense, obtain insurance coverage for loss of or damage to such Unit and any equipment, fixtures, furniture, furnishings, personal effects, and other property belonging to such Owner, his guests or invitees, and may, at his expense, obtain insurance coverage against personal liability for injury to the person or property of another while within such Owner's Unit or upon the Common Elements. Risk of loss of or damage to any equipment, fixtures, furniture, furnishings and personal property belonging to or carried on the person of the Owner, his guests or invitees, or which may be stored in any Unit, or in or upon Common Elements, shall be borne by the Owner of each Unit. All equipment, fixtures, and furnishings constituting a portion of the Common Elements and held for the joint use and benefit of the Owners of Units shall be covered by such insurance as shall be maintained in force and effect by the Association as hereinafter provided. All insurance obtained by the Owner of each Unit shall, whenever such provisions shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners, the Association or Developer, and their respective servants, agents, employees and guests.

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

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

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

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

(a) All policies shall be written with a company licensed to do business in the State of Alabama.

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

representatives.

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

#### **8.04. Premiums.**

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

(b) In the event any use shall lead to an increase in fire or other insurance obtained by the Association pursuant to this Article VIII, or insurance procured by the individual Unit Owners, the party causing such increase shall be liable for payment of the same to the Association or the individual Unit Owner(s), as the case may be. The party so charged with increasing premium costs shall have the right to contest the validity of such increase. An assessment made by the Association to pay such increase in premiums may be enforced by the Association in the manner provided under Article IV of the Declaration.

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

## ARTICLE IX

### CONDEMNATION

9.01. Condemnation Considered a Casualty Loss. The taking of a portion of Common Elements by eminent domain shall be deemed to be a casualty loss, and the awards for such taking be deemed to be proceeds from insurance on account of the casualty and shall be applied and distributed by the Association in accordance with the provisions of Article VIII.

## ARTICLE X

### TERMINATION

10.01 Termination by Unanimous Consent. This Declaration and said plan of condominium ownership may only be otherwise terminated by the unanimous consent of all 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. Such election to terminate this Declaration and the plan of condominium ownership established herein shall be executed in writing by all of the aforesaid parties in recordable form, and such instrument shall be recorded in the Probate Office of Jefferson County, Alabama.

## ARTICLE XI

### AMENDMENT

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

(a) A proposal to amend this Declaration may be considered at any meeting of the members of the Association called for that purpose in accordance with the provisions of the By-Laws; provided that the Association provides prior written notice of such meeting to the Mortgagees as provided in Section 7.01 above. The proposal to amend the Declaration must be approved by the affirmative vote of the members owning not less than sixty-seven percent (67%) of the Units and by the affirmative vote of the Mortgagees holding fifty-one percent (51%) of the Mortgages on Units unless otherwise required under Section 7.02 above.

(b) Notwithstanding the foregoing, no amendment to the Declaration shall

- i. Change a Unit, including the ownership in Common Elements, responsibility for Common Expenses and voting rights, without the prior written approval of the Unit Owner or Unit Owners so affected and prior written approval of the holders of record of any Mortgage or other liens

on the Unit or Units so affected; or

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

(c) A copy of each amendment so adopted shall be certified by the Board of Directors of the Association as having been duly adopted, and shall be effective when recorded in the Probate Court of Shelby County, Alabama.

## ARTICLE XII

### MISCELLANEOUS

12.01. 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.

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


12.03. 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.

12.04. Exhibits. Exhibits A, B, and C attached to this Declaration are an integral part of this Declaration.

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

IN WITNESS WHEREOF, the Developer has hereunto set its signature and seal on the day and year first above written.

**KEN UNDERWOOD PROPERTIES, LLC**

  
\_\_\_\_\_  
KEN UNDERWOOD  
Its: Member

STATE OF ALABAMA                    )  
SHELBY COUNTY                        )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Ken Underwood, whose name is signed to the foregoing Declaration of Condominium, as the sole Member of Ken Underwood Properties, LLC, and who is known to me, acknowledged before me on this day that, with proper corporate authority and being informed of the contents of the above and foregoing Declaration of Condominium he executed the same voluntarily on the day the same bears date for said company.

Given under my hand and official seal of office this 28<sup>th</sup> day of October, 2004.

Heidi Wonn

Notary Public

My Commission Expires: 2-2-05

**EXHIBIT B**

| <u>Unit No.</u> | <u>Size of Unit<br/>(square feet)</u> | <u>Ownership of<br/>Common Elements<br/>(percentage %)</u> | <u>Number of<br/>Votes</u> |
|-----------------|---------------------------------------|--|----------------------------|
| 1               | 2,432                                 | 29.1   | 29                         |
| 2               | 895                                   | 10.6   | 11                         |
| 3               | 1,144                                 | 13.7   | 14                         |
| 4               | 2,163                                 | 25.9   | 26                         |
| 5               | 1,732                                 | 20.7   | 21                         |

# EXHIBIT C

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## BY-LAWS OF NARROWS CENTRE OWNERS ASSOCIATION

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### ARTICLE I

#### THE ASSOCIATION

Section 1. Identity. These are the By-Laws of Narrows Centre Condominium Owners Association, an unincorporated association (the "Association"). The Association has been organized for the purpose of providing for the operation, management, maintenance, control and administration of Narrows Centre (the "Condominium"), pursuant to the provisions of the Alabama Uniform Condominium Act [Code of Alabama 1975 §§35-8A-1 et. seq.] and the Declaration of Condominium of Narrows Centre (the "Declaration") as filed with the Office of the Judge of Probate of Shelby County, Alabama in accordance with the provisions of said Act.

Section 2. Principal Office. The principal office of the Association in the State of Alabama shall be located at 198 Narrows Drive, Suite 102, Birmingham, Alabama 35242. 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 may be, but need not be, identical with 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 24th day in the month of January in each year, beginning with the year 2005 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 and 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 conveniently may be.

Section 2. Special Meetings. Special meetings of the Membership, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the Chairman or by the Board of Directors and shall be called by the Chairman at the request of any member of the Association.

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 fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the Chairman, the Board of Directors, 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. Quorum. The presence at any meeting of the Membership of the members entitled to cast a majority 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 from time to time without further notice. At such adjourned 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 6. 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, or these By-Laws.

Section 7. 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. Such proxy shall be filed with the Association before or at the time of the meeting. No proxy shall be valid after ninety days from the date of its execution, unless otherwise provided in the proxy.

Section 8. Voting Rights. At any meeting of the Membership, the members who are owners of whole Units (as defined in the Declaration) shall be entitled to cast one vote for each percentage point of ownership in the Common Elements that he owns. If a Unit is owned by one person, his right to vote shall be established by record title to his Unit. If a Unit is owned by more than one person, the person entitled to cast the votes for the Unit shall be designated by a certificate signed by all of the record owners of the Unit and filed with the Association. If a Unit is owned by a corporation, the person entitled to cast the vote for the Unit shall be designated by a certificate signed by the President or Vice President and attested to by the Secretary or Assistant Secretary of the corporation and filed with the Association. Such certificate shall be valid until revoked or until superceded by a subsequent certificate or a change in the ownership of the Unit concerned. A certificate designating the person entitled to cast the vote of a Unit may be revoked at any time by any owner of a Unit. If such a certificate is not on file, the vote of such owner shall not be considered in determining the requirement for a quorum nor for any other purpose.

Section 9. 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 business and affairs of the Association shall be managed by or under the direction of its Board of Directors.

Section 2. Number, Tenure and Qualifications. The number of directors of the Association shall consist of not less than two (2) nor more than five (5) directors with the exact number to be fixed from time to time by the members holding a majority of the votes of the Association. The initial Board of Directors shall consist of three (3) directors.

Section 3. Election of Directors. Election of directors shall be held at the annual 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 votes for each of as many nominees as there are vacancies to be filled at the time of the election.

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 Chairman or any two directors.

Section 6. Notice. Notice of any special meeting shall be given at least three (3) days previously thereto by written notice delivered personally or mailed to each director at his business address, or by telegram. 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 telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. 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 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.

Section 9. Action Without a Meeting. Any action that may be taken by the Board of Directors at a meeting may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors.

Section 10. Vacancies. Any vacancy occurring in the Board of Directors and any directorship to be filled by reason of an increase in the number of directors may be filled by a majority of the remaining directors. A director elected or appointed, as the case may be, shall be elected or appointed for the unexpired term of his predecessor in office.

Section 11. Compensation. By resolution of the Board of Directors, the directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors, and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as a director or both. No such payment shall preclude any director from serving the association in any other capacity and receiving compensation therefor.

Section 12. Resignations. Any director of the Association may resign at any time either by oral tender of resignation at any meeting of the Board or by giving written notice thereof to the Association. Such resignation shall take effect at the time specified therefor; and the acceptance of such resignation shall not be necessary to make it effective.

Section 13. 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 regular or special meeting of the Board of Directors.

Section 14. Presumption of Assent. A director of the Association who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the Secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the Chairman of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

#### ARTICLE IV

##### CONTRACTS, LOANS, CHECKS AND DEPOSITS

Section 1. Contracts. The Board of Directors may authorize any director or agent 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. No loans shall be made by the Association to any person who is a director of the Association.

Section 3. Checks, Draft, 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 director or directors, 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 Chairman 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 V

### 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 shall keep at its registered or principal office in Alabama a record of the names and addresses of members entitled to vote, and directors. 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. Such records shall include:

(a) Association Accounts. The receipts and expenditures of the Association.

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

Section 2. Budget. The Board of Directors shall adopt a budget for each calendar year that shall include the estimated funds required to defray the Common Expenses and to provide and maintain funds for the foregoing accounts and reserves according to good accounting practices. Copies of the budget and proposed assessments shall be transmitted to each member on or before December 1 preceding the year for which the budget is made. If the budget is amended substantially, a copy of the amended budget shall be furnished to each member.

Section 3. Assessments. 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 of the Association. 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.

Section 4. Assessments for Emergencies. 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 30 days after such notice in such manner as the Board of Directors of the Association may require in the notice of assessment.

Section 5. Bonds. Fidelity bonds may 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 shall not be less than three times the amount of the total annual assessments against members for Common Expenses. The premiums of such bonds shall be paid by the Association.

## ARTICLE VI

### 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 Declaration, the provisions of the Condominium Ownership Act of Alabama, 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 VII

### FISCAL YEAR

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

## ARTICLE VIII

### INDEMNIFICATION

Section 1. The Association shall 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, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a director, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

Section 2. The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association, as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of his duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the court shall deem proper.

To the extent that a director, employee or agent of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Sections (1) and (2), or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

Any indemnification under Sections (1) and (2) (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, employee or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Sections (1) and (2). Such determination shall be made (1) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such action, suit or proceeding, or (2) if such a quorum is not obtainable, or, even if obtainable a quorum of disinterested directors so directs, by independent legal counsel in a written opinion, or (3) by the members.

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of an undertaking by or on behalf of the director, officer, employee or agent to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this section.

The indemnification provided by this section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any by-law, agreement, vote of members or disinterested director 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, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

## ARTICLE IX

### AMENDMENT

Section 1. Amendment to By-Laws. These By-Laws may be amended, altered or repealed by the members at any regular or special meeting upon the affirmative vote of the holders of not less than one-half of the outstanding votes.

Section 2. Recordation. No modification or amendment to the By-Laws shall be valid and effective until the Chairman 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 Shelby County, Alabama.